REPORT
OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-SIXTH SESSION

SUPPLEMENT No. 33 (A/46/33)

UNITED NATIONS

REPORT
OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-SIXTH SESSION
SUPPLEMENT No. 33 (A/46/33)

UNITED NATIONS

New York, 1991

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0255-1276

[Original: Arabic/Chinese/English/
French/Russian/Spanish]

[16 August 1991]

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 10	1
II.	GENERAL DEBATE	11 - 16	4
	Statement of the Rapporteur	11 - 16	4
III.	MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY	17 - 47	7
	Statement of the Rapporteur	17 - 47	7
	A. Draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security	17 - 21	7
	B. Consideration of the working paper submitted by the Union of Soviet Socialist Republics	22 - 47	12
	1. Introduction of the working paper by the sponsor ..	23 - 33	12
	2. General comments on the working paper	34 - 47	14
IV.	PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES	48 - 53	19
	Statement of the Rapporteur	48 - 53	19
	Examination of the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States	48 - 53	19
V.	COMMUNICATIONS ADDRESSED TO THE CHAIRMAN ON ISSUES BEARING UPON THE WORK OF THE COMMITTEE	54 - 58	21
	Statement of the Rapporteur	54 - 58	21
	A. United Nations Decade of International Law	54 - 56	21
	B. Committee on Conferences	57 - 58	21
Annex.	HANDBOOK ON THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES		23

I. INTRODUCTION

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 45/44 of 28 November 1990 and met at the United Nations Headquarters from 4 to 22 February 1991. [1]

2. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975 and decision 45/311 of 28 November 1990, the Special Committee was composed of the following member States: Algeria, Argentina, Barbados, Belgium, Brazil, China, Colombia, Congo, Cyprus, Czechoslovakia, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guyana, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Poland, Romania, Rwanda, Sierra Leone, Spain, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zambia.

3. The session was opened by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.

4. Mr. Vladimir S. Kotliar, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of its Working Group. Mr. Andronico O. Adede, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Special Committee and of its Working Group. Ms. Christiane Bourloyannis, Legal Officer, Ms. Virginia Morris and Mr. Francesco Presutti, Associate Legal Officers (Codification Division, Office of Legal Affairs), acted as assistant secretaries of the Special Committee and its Working Group.

5. At its 141st meeting, on 4 February 1991, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, [2] and taking into account the results of the pre-session consultations among its member States conducted by the Legal Counsel, elected the Bureau of the Special Committee, as follows:

Chairman: Mr. Carlos Calero-Rodrigues (Brazil)

Vice-Chairmen: Mr. Alfonso María Dastis (Spain)
Mr. Masahiro Fukukawa (Japan)
Mr. Sani L. Mohammed (Nigeria)

Rapporteur: Mr. Zbigniew Maria Wlosowicz (Poland)

---

[1] For the list of members of the Committee at its 1991 session, see A/AC.182/INF/16.

[2] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. At the same meeting, the Special Committee adopted the following agenda (A/AC.182/L.69):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Consideration of the questions mentioned in General Assembly resolution 45/44 of 28 November 1990, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

8. In accordance with paragraph 5 of General Assembly resolution 45/44, the Special Committee, having received requests for observer status from the permanent missions to the United Nations of Angola, Austria, Bulgaria, the Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Chile, Cuba, Ethiopia, Guatemala, Guinea, Guinea-Bissau, the Libyan Arab Jamahiriya, Malaysia, Mongolia, Morocco, the Netherlands, Oman, Peru, Portugal, Qatar, Senegal, Suriname, Sweden, Thailand, Uganda, the Ukrainian Soviet Socialist Republic, the United Republic of Tanzania, Viet Nam and Yemen, took note of those requests and accepted the participation of observers from those Member States.

9. Also at its 141st meeting, the Special Committee established a Working Group of the Whole and agreed on the following organization of work: one meeting would be devoted to a general debate in the plenary on all items concerning its mandate, as described in paragraph 3 of General Assembly resolution 45/44, and one plenary meeting would be devoted to the examination of the progress report of the Secretary-General on the preparation of the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.68). The Special Committee decided that its Working Group would devote 15 to 17 meetings to the question of fact-finding by the United Nations in the field of the maintenance of international peace and security, 4 to 6 meetings to the proposals relating to the maintenance of international peace and security that were submitted to the Special Committee during its session in 1990, as well as those which might be submitted to it at its 1991 session, and 2 or 3 meetings to the question of the peaceful settlement of disputes between States; 3 to 4 meetings were reserved. It was understood that this distribution of meetings would be applied with the necessary degree of flexibility, taking account of the progress achieved in the consideration of the items.

10. As to the question of the maintenance of international peace and security, the Special Committee had before it document A/AC.182/L.66/Rev.1, entitled "Fact-finding by the United Nations in the field of the maintenance of international peace and security", submitted by Belgium, Czechoslovakia, Germany, Italy, Japan, New Zealand and Spain and, subsequently, document A/AC.182/L.70. The

Special Committee also had before it the proposal entitled "New issues for consideration in the Special Committee" submitted by the Union of Soviet Socialist Republics (A/AC.182/L.65), as set out in paragraph 14 of the report of the Special Committee to the General Assembly at its forty-fifth session, 3/ a further proposal by the same delegation (see para. 46 below) as well as the proposal submitted by the Libyan Arab Jamahiriya (see para. 14 below). The Committee had also before it the progress report of the Secretary-General on the preparation of the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.68), to which the text of the draft handbook was annexed.

3/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 33 (A/45/33).

II. GENERAL DEBATE

Statement of the Rapporteur

11. According to the decision taken at its 141st meeting on the organization of its work, the Special Committee held a general debate on 15 February 1991.

12. One of the representatives taking part in the general debate stressed the importance of the work of the Special Committee on the strengthening of the role of the United Nations in the areas of the peaceful settlement of disputes and the maintenance of international peace and security. On the question of the peaceful settlement of disputes, he referred to the previous accomplishments of the Special Committee, namely, the Manila Declaration on the Peaceful Settlement of International Disputes, (General Assembly resolution 37/10, annex), the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51, annex) and the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.68, annex). With respect to the maintenance of international peace and security, the representative pointed out the usefulness that the paper on fact-finding activities by the United Nations being elaborated by the Special Committee, could have to the extent that it duly guaranteed respect for the principles of sovereignty and non-intervention in the internal affairs of States. The representative further expressed his views on the application of Article 27 of the Charter which in his view gave a privileged position to the permanent members of the Security Council, and also stressed that under the Article decisions of the Council required "affirmative votes" of all the permanent members in order to be valid.

13. Another representative observed that the peaceful settlement of disputes was one of the prime aims of the Security Council, for which various means were available to it, including the application of sanctions. He regretted that the decisions of the Security Council relating to the application of sanctions had recently not received the support of all of its members. Referring to the question of Article 27 of the Charter, the representative said that 40 years of practice had established that decisions of the Security Council under that Article did not require an affirmative vote by all its permanent members, but only the absence of a negative vote. This had strengthened the Council.

14. Another representative taking part in the debate expressed the view that the Special Committee could suggest ways of strengthening the role of the Security Council, the main organ of the United Nations entrusted with the power to adopt enforcement measures to maintain international peace and security, by removing some of the provisions of the Charter creating obstacles to its ability to perform that function. He therefore made certain suggestions, which he later submitted in the proposal set out below.

"Proposal submitted by the Socialist People's Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security

"The Security Council has become incapable of discharging its primary responsibility for the maintenance of international peace and security in the manner intended by the drafters of the Charter and has not fulfilled its unique task in the history of the international Organization, namely the task of directing collective action for the maintenance of peace, justice and the rule of law, for reasons that are evident to all the Member States and which have impeded the Security Council in its endeavours to play the role assigned to it under the Charter.

"Accordingly, there is a vital and urgent need to consider ways and means to rectify the procedure of the Security Council which, on a number of occasions, has failed to take decisive and prompt action to counter acts of aggression and breaches of the peace.

"Consequently, the delegation of the Socialist People's Libyan Arab Jamahiriya proposes that the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, being responsible for the submission of proposals concerning the strengthening of the role of the United Nations in regard to the maintenance of international peace and security, should look into the following matters while it is studying those proposals:

"(a) Measures to strengthen the role of the Security Council in regard to the maintenance of international peace and security in the light of past experience. Consideration should also be given to ways to eliminate the adverse consequences for the maintenance of international peace and security of the application of the principle of consensus among the permanent members of the Security Council, which has paralysed it and rendered it incapable of fulfilling the responsibilities assigned to it under the Charter;

"(b) A definition of the non-procedural matters in which the use of the right of veto could be suspended or restricted. Subject to the holding of further negotiations, it would be appropriate to study some fields in which the principle of consensus should not apply. For example, this principle should not be used to defend acts of aggression, occupation and injustice;

"(c) Due regard should be paid to the fact that the maintenance of international peace and security is a joint responsibility of all the States Members of the United Nations, regardless of their size, power and resources, in accordance with the principle of sovereign equality and democratic participation in the conduct of international affairs;

"(d) Strengthening the role of the General Assembly in regard to the maintenance of international peace and security."

15. At the 149th meeting of the Special Committee, on 19 February 1991, one representative expressed reservations on the draft proposal presented by the Libyan Arab Jamahiriya. In his view, the proposal came at a time when the Security

Council had proved to be a body functioning effectively in the discharge of its responsibilities under the Charter.

16. At the end of the session, all the participants expressed their deep gratitude and appreciation to the Chairman of the Special Committee, His Excellency Ambassador Carlos Calero-Rodrigues, for his excellent guidance, dedication and outstanding contribution, with the efficient help of the members of the Bureau and the Secretariat, to the successful outcome of the work.

III. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Statement of the Rapporteur

A. Draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security

17. As requested by the General Assembly in paragraph 3 (a) of its resolution 45/44, the Working Group accorded priority to the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations.

18. In that context, and in accordance with paragraph 3 (a) (i) of the above-mentioned resolution, the Working Group considered a draft document on fact-finding by the United Nations in the field of the maintenance of international peace and security. It conducted its deliberations on the basis of a working paper contained in document A/AC.182/L.66/Rev.1 submitted by Belgium, Czechoslovakia, Germany, Italy, Japan, New Zealand and Spain, which was later revised, and subsequently presented in document A/AC.182/L.70.

19. As a result of intensive work, and on the basis of the latter document, the Special Committee completed its work on the draft Declaration* on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and decided to submit it to the General Assembly for consideration and adoption:

"Draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security

"The General Assembly,

"*Recalling* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 1/ the Manila Declaration on the Peaceful Settlement of International Disputes, 2/ the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, 3/ the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, 4/ and their provisions regarding fact-finding,

---

"1/ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

"2/ General Assembly resolution 37/10 of 15 November 1982, annex.

"3/ General Assembly resolution 42/22 of 18 November 1987, annex.

"4/ General Assembly resolution 43/51 of 5 December 1988, annex.

---

* See observations in para. 21.

"_Emphasizing_ that the ability of the United Nations to maintain international peace and security depends to a large extent on its acquiring detailed knowledge about the factual circumstances of any dispute or situation, the continuance of which might threaten the maintenance of international peace and security (hereinafter 'disputes or situations'),

"_Recognizing_ that the full use and further improvement of the means for fact-finding of the United Nations could contribute to the strengthening of the role of the United Nations in the maintenance of international peace and security and promote the peaceful settlement of disputes as well as the prevention and removal of threats to the peace,

"_Desiring_ to encourage States to bear in mind the role that competent organs of the United Nations can play in ascertaining the facts in relation to disputes or situations,

"_Recognizing_ the particular usefulness of fact-finding missions that the competent United Nations organs may undertake in this respect,

"_Bearing in mind_ the experience and expertise acquired by the United Nations in the field of fact-finding missions,

"_Recognizing the need_ for States, in exercising their sovereignty, to cooperate with the relevant organs of the United Nations as regards fact-finding missions undertaken by them,

"_Seeking also_ to contribute to the effectiveness of the United Nations, with a view to enhancing mutual understanding, trust and stability in the world,

"_Solemnly declares_ as follows:

"I

"1. In performing their functions in relation to the maintenance of international peace and security, the competent organs of the United Nations should endeavour to have full knowledge of all relevant facts. To this end they should consider undertaking fact-finding activities.

"2. For the purpose of the present paper fact-finding means any activity designed to obtain detailed knowledge of the relevant facts of any dispute or situation which the competent United Nations organs need in order to exercise effectively their functions in relation to the maintenance of international peace and security.

"3. Fact-finding should be comprehensive, objective, impartial and timely.

"4. Unless a satisfactory knowledge of all relevant facts can be obtained through the use of the information-gathering capabilities of the Secretary-General or other existing means, the competent organ of the United Nations should consider resorting to a fact-finding mission.

"5. In deciding if and when to undertake such a mission, the competent United Nations organs should bear in mind that the sending of a fact-finding mission can signal the concern of the Organization and should contribute to building confidence and defusing the dispute or situation while avoiding any aggravation of it.

"6. The sending of a United Nations fact-finding mission to the territory of any State requires the prior consent of that State, subject to the relevant provisions of the Charter of the United Nations.

"II

"7. Fact-finding missions may be undertaken by the Security Council, the General Assembly and the Secretary-General, in the context of their respective responsibilities in maintaining international peace and security in accordance with the Charter.

"8. The Security Council should consider the possibility of undertaking fact-finding to discharge effectively its primary responsibility for the maintenance of international peace and security in accordance with the Charter.

"9. The Security Council should, wherever appropriate, consider the possibility of providing in its resolutions for recourse to fact-finding.

"10. The General Assembly should consider the possibility of undertaking fact-finding for exercising effectively its responsibilities under the Charter for the maintenance of international peace and security.

"11. The General Assembly should, wherever appropriate, consider the possibility of providing for recourse to fact-finding in its resolutions relevant to the maintenance of international peace and security.

"12. The Secretary-General should pay special attention to using the United Nations fact-finding capabilities at an early stage in order to contribute to the prevention of disputes and situations.

"13. The Secretary General, on his own initiative or at the request of the States concerned, should consider undertaking a fact-finding mission when a dispute or a situation exists.

"14. The Secretary-General should prepare and update lists of experts in various fields who would be available for fact-finding missions. He should also maintain and develop, within existing resources, capabilities for mounting emergency fact-finding missions.

"15. The Security Council and the General Assembly should, in deciding to whom to entrust the conduct of a fact-finding mission, give preference to the Secretary-General, who may, inter alia, designate a special representative or a group of experts reporting to him. Resort to an ad hoc subsidiary body of the Security Council or the General Assembly may also be considered.

"16. In considering the possibility of undertaking a fact-finding mission, the competent United Nations organ should bear in mind other relevant fact-finding efforts, including those undertaken by the States concerned and in the framework of regional arrangements or agencies.

"17. The decision by the competent United Nations organ to undertake fact-finding should always contain a clear mandate for the fact-finding mission and precise requirements to be met by its report. The report should be limited to a presentation of findings of a factual nature.

"18. Any request by a State to a competent organ of the United Nations for the sending of a United Nations fact-finding mission to its territory should be considered without undue delay.

"III

"19. Any request by a competent organ of the United Nations for the consent of a State to receive a fact-finding mission within its territory should be given timely consideration by that State. This State should inform the said organ of its decision without delay.

"20. In the event a State decides not to admit a United Nations fact-finding mission to its territory, it should, if it deems it appropriate, indicate the reasons for its decision. It should also keep the possibility of admitting the fact-finding mission under review.

"21. States should endeavour to follow a policy of admitting United Nations fact-finding missions to their territory.

"22. States should cooperate with United Nations fact-finding missions and give them, within the limits of their capabilities, full and prompt assistance necessary for the exercise of their functions and the fulfilment of their mandate.

"23. Fact-finding missions should be accorded all immunities and facilities needed for discharging their mandate, in particular full confidentiality in their work and access to all relevant places and persons, it being understood that no harmful consequences will result to these persons. Fact-finding missions have an obligation to respect the laws and regulations of the State in which they exercise their functions; such laws and regulations should not however be applied in such a way as to hinder missions in the proper discharge of their functions.

"24. The members of fact-finding missions, as a minimum, enjoy the privileges and immunities accorded to experts on missions by the Convention on the Privileges and Immunities of the United Nations. Without prejudice to their privileges and immunities, members of fact-finding missions have an obligation to respect the laws and regulations of the State in the territory of which they exercise their functions.

"25. Fact-finding missions have an obligation to act in strict conformity with their mandate and perform their task in an impartial way. Their members have an obligation not to seek or receive instructions from any Government or from any authority other than the competent United Nations organ. They should keep the information acquired in discharging their mandate confidential even after the mission has fulfilled its task.

"26. The States directly concerned should be given an opportunity, at all stages of the fact-finding process, to express their views in respect of the facts the fact-finding mission has been entrusted to obtain. When the results of fact-finding are to be made public, the views expressed by the States directly concerned should, if they so wish, also be made public.

"27. Whenever fact-finding includes hearings, appropriate rules of procedure should ensure their fairness.

"IV

"28. The Secretary-General should monitor the state of international peace and security regularly and systematically in order to provide early warning of disputes or situations which might threaten international peace and security. The Secretary-General may bring relevant information to the attention of the Security Council and, where appropriate, of the General Assembly.

"29. To this end the Secretary-General should make full use of the information-gathering capabilities of the Secretariat and keep under review the improvement of these capabilities.

"V

"30. The sending of a United Nations fact-finding mission is without prejudice to the use by the States concerned of inquiry or any similar procedure or of any means of peaceful settlement of disputes agreed by them.

"31. Nothing in the present paper is to be construed as prejudicing in any manner the provisions of the Charter."

20. At the 150th meeting of the Special Committee, the Chairman made a statement in which he pointed out that, during the elaboration of the draft Declaration, some delegations had suggested that a provision concerning the termination of fact-finding missions should be included in the text. In the view of those delegations, it was particularly important to indicate that the withdrawal of the consent given by a State would result in the cessation of the activities of the fact-finding mission in its territory. Several delegations, however, expressed disagreement with the proposition. As a result, those delegations which supported the proposal, while not insisting on it, expressed the wish to place on record their understanding that paragraph 6 of the text did not exclude the ability of a State, in giving its prior consent to the sending of a fact-finding mission to its territory, to make that consent subject to certain conditions, and that if such conditions were not observed, the competent sending organ should terminate the fact-finding mission.

21. Some delegations raised doubts as to the title of the document as well as to the inclusion of the word "solemnly" in the last preambular paragraph and expressed the wish that both questions should be discussed again at the next session of the General Assembly. Others believed that the title appropriately reflected the nature of the document which the Committee had elaborated and that inclusion of the word "solemnly" conformed with usual United Nations practice. Some other delegations expressed their serious doubts that there is an established practice regarding the use of the term "solemnly".

B. Consideration of the working paper submitted by the Union of Soviet Socialist Republics

22. At its 148th, 149th and 150th meetings, the Special Committee considered the working paper entitled "New issues for consideration in the Special Committee" (A/AC.182/L.65), submitted by the Union of Soviet Socialist Republics, the text of which is reproduced in paragraph 14 of the report of the Special Committee. 3/

1. Introduction of the working paper by the sponsor

23. In introducing the working paper, the representative of the Union of Soviet Socialist Republics remarked that the Special Committee had produced some concrete results in connection with the three main areas of its mandate, namely, the maintenance of international peace and security, the peaceful settlement of disputes and the rationalization of the procedures of various organs of the United Nations. In the view of the representative, the document on fact-finding was another accomplishment of the Special Committee in an essential area of activity of the United Nations. It was the hope of the representative that the Special Committee would also be successful in reaching concrete results with respect to some of the new questions outlined in his delegation's working paper, which he analysed paragraph by paragraph.

24. Regarding paragraph 1 (a) of the working paper (further elaborated in paragraph 32 below), the sponsor observed that the work of the Special Committee had mainly focused on strengthening the role of the United Nations and was of the view that the time had come for the Special Committee to consider cooperation between the United Nations and regional organizations.

25. With respect to paragraph 1 (b) of the proposal, the representative expressed the need to have one single document covering the practice of the Secretary-General's peace-making efforts, consistent with some of the provisions in the working paper on fact-finding activities.

26. As to paragraph 2 (a) of the working paper, the representative stressed the need for a general convention on the peaceful settlement of disputes, which would publicize and give new impetus to traditional means for the settlement of disputes. In this respect, he mentioned the useful results of the meeting of experts within the framework of the Conference on Security and Cooperation in Europe (CSCE) held at Valletta in January and February 1991, and suggested that the results should be used by the Special Committee. The representative recalled that, in drafting a general convention on the peaceful settlement of disputes, the Committee should use the results of the work of such regional groups, as had been done in the case of the handbook on the peaceful settlement of disputes prepared by the Secretary-General (A/AC.182/L.68, annex), the text of which had been adopted by the Committee at its current session.

27. In introducing paragraph 2 (b), the representative commented that, despite its vital importance, very little had been done in the past years concerning the question of developing ways and means of implementing the Charter of the United Nations and the norms of international law, as well as related enforcement actions *vis-à-vis* a State that has breached the peace or failed to comply with the Security Council's decisions. He suggested that consideration be given to some particular aspect of the question.

28. Regarding paragraph 2 (c) of the working paper, the representative noted that it would be useful to study the role of institutions set up and used by the Security Council, such as military observers, peacemaking and peace-keeping efforts, as well as the use of demilitarized zones, truces, cease-fires and the use of civilian experts.

29. Regarding paragraph 2 (d), the representative observed that the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security was limited to existing disputes. Accordingly, the development of measures to promote the prevention of armed conflicts and to provide assistance for the elimination of the consequences of ecological disasters or natural calamities should be considered an important task which the Committee might wish to undertake.

30. As to paragraph 2 (e) of the proposal, the representative remarked that the Special Committee should take up the question of strengthening the system of collective security, in particular the question of improving the relationship between the Security Council, the Secretary-General and regional organizations.

31. Regarding paragraph 2 (f), the representative suggested that the Special Committee should study the question of the strategic role of the United Nations in establishing a new legal world order at the threshold of the twenty-first century to consider elaboration of practical recommendations which would serve to strengthen and enhance the collective security system of the United Nations.

32. In further elaboration of paragraph 1 (a) of the working paper, another representative of the same delegation explained that the proposal was based on Chapter VIII of the Charter, and specifically on Article 52, which reflected the role assigned by the Charter to regional organizations or agencies in dealing with conflicts, and suggested a number of ways by which regional organizations might function in accordance with the new realities of the security system envisaged in the Charter.

33. In this connection, he made a number of specific proposals for the Special Committee. He suggested the consideration of the reciprocal relationship between the United Nations and regional organizations based on Chapter VIII and noted that any question regarding the maintenance of international peace and security which arose between parties to an existing regional agreement should be considered first and foremost within the regional framework. He accordingly emphasized that a local dispute should be considered by the Security Council only after the parties had made all their efforts in the context of regional bodies and suggested that the Security Council should promote the initiative of the interested States to develop procedures for the peaceful settlement of disputes at a regional level, in accordance with Article 52. He also stressed that the Security Council, when determining the existence of any threat to the peace, should use as appropriate regional bodies and organizations for its course of action. Such course of activity, he added, should not be taken without the authority of the Security Council and should in no way impair the right of self-defence in the case of an armed attack; the Security Council should at all times be fully informed of activities undertaken under regional agreements, as provided for in Article 54. Lastly, he suggested that the Secretary-General and leaders of the regional organizations should meet on a regular basis to exchange information on situations that may threaten the peace and to promote means of joint initiatives for the settlement of regional disputes.

2. General comments on the working paper

34. It was generally agreed that the working paper by the Union of Soviet Socialist Republics provided the Special Committee with a good basis for future work on its mandate concerning the question of the maintenance of international peace and security.

35. One representative welcomed the Soviet proposal as recognizing the vital role that could be played by regional organizations in the prevention of conflicts and in this context drew attention to the positive achievement of the Movement of Non-Aligned Countries. The representative, however, pointed out a lacuna in the working paper which, in his view, failed to recognize adequately the role of the General Assembly in the maintenance of peace and security. He believed that the General Assembly should play a prominent role in that area while the Security Council played a primary role. He further considered it desirable that the composition of the Council be expanded so as to better reflect the composition of the Organization. He also questioned the use of the veto power and remarked that, by removing it, the authority of the Council would be enhanced.

36. Another representative remarked that of all the ideas contained in the Soviet proposal, the Special Committee could concentrate its efforts on the suggestion contained in paragraph 1 (b) relating to broadening the peace-making efforts of the Secretary-General. Some delegations, however, questioned whether much else could be done with a view to enhancing the Secretary-General's role, after the adoption of the Declaration on the Prevention and Removal of Disputes and the elaboration of the document on fact-finding activities by the United Nations.

37. In commenting specifically on the proposal contained in paragraph 1 (b) (iv), one representative further recalled that at the past session of the General Assembly his delegation, followed by some others, had already made suggestions on the recommendations contained in the Secretary-General's report on the work of the Organization. He welcomed a more institutionalized practice to that effect, since in his view the Secretary-General's recommendations should not be lost in the course of the year's work. The Special Committee, or the Sixth Committee itself, he added, could be the appropriate body for their consideration. Among the ideas raised in the Secretary-General's report, the representative favoured the idea of giving the Secretary-General the authority to submit requests to the International Court of Justice for advisory opinions. Another representative considered this idea as well as the regime of advisory opinion as a whole, to deserve consideration in the Special Committee.

38. Some other representatives, while fully supporting the principle that States should have more recourse to the Court, expressed doubts on the proposal concerning authorizing the Secretary-General to request advisory opinions from the International Court of Justice. One representative gave specific reasons for his hesitation: he recalled, first, the fact that Article 96 might not authorize such a role for the Secretary-General; secondly, the consensual basis of the Court's jurisdiction; thirdly, the fact that the Secretary-General was not a representative body; and fourthly, the practical problems that might arise in a situation where a party was not willing to cooperate in the proceedings. He thus concluded that the most proper role for the Secretary-General to play would be to use his good offices to facilitate the reaching of an agreement between the parties to the dispute to submit it to the Court.

39. The elaboration of a general convention on the peaceful settlement of disputes proposed in paragraph 2 (a) of the working paper was welcomed by a number of representatives. One representative also welcomed the similar initiative put forward by the Movement of Non-Aligned Countries on the peaceful settlement of disputes, as contained in the Hague Declaration of 29 June 1989, which could be taken up by the Special Committee. Another representative further stressed that, in the light of the instruments already in existence in the area of the peaceful settlement of disputes, emphasis should be placed on jurisdictional questions, so as to develop more effective ways to resort to procedures provided for in those instruments. It was mentioned by some representatives that by considering the question of the peaceful settlement of disputes, the Special Committee was fulfilling its mandate in the context of the Decade of International Law. Several delegations referred to the report of the meeting of experts within the framework of the Conference on Security and Cooperation in Europe held at Valletta in January and February 1991. It was stressed that the report contained many interesting points and that it could be used as a source of ideas for further work of the Special Committee, and demonstrated the extent to which a group of States could go in formulating a set of principles and mechanisms for the peaceful settlement of disputes.

40. A number of representatives expressed an interest in the question of the ways and means of implementing the Charter and the norms of international law, contained in paragraph 2 (b) of the Soviet proposal, since the violation of those principles was viewed as the root cause of all crises and disputes. One representative saw a link between the Soviet proposal and the proposal submitted to the Sixth Committee by his delegation during the crisis resulting from the situation between Iraq and Kuwait, namely, the proposal to draft general guidelines on problems of "sanction management". By that, he meant the handling of a set of problems which had arisen when Chapter VII had been recently applied involving such aspects as granting exceptions to sanctions for humanitarian reasons, and the recognition of the economic impact of sanctions on States not directly targeted by an embargo. The proposal to elaborate guidelines on "sanction management" was supported by another representative who also commented on the proposal to consider enforcement action vis-à-vis a State which had failed to comply with Security Council resolutions, and observed in this respect that Chapter VII could be applied in an effective manner if appropriate rules were established for its timely implementation. Another representative noted that the consideration of "sanction management" was an interesting idea, although the large amount of case law developed in the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait could probably answer most of the questions raised in that connection.

41. One representative expressed a favourable opinion on the proposal to consider the adoption of provisional measures by the Security Council under Article 40 of the Charter, contained in paragraph 2 (c) of the working paper.

42. Favourable comments were expressed on the proposal to strengthen the preventive functions of the United Nations, contained in paragraph 2 (d) of the working paper, although one representative stressed that in that area considerable progress had already been made through the document on fact-finding activities. In that connection, some representatives supported the idea of considering election monitoring by the United Nations which was viewed as part of conflict prevention.

43. Concerning the proposal contained in paragraph 2 (e) of the working paper, another representative stressed that collective security was a basic element of the Charter and of the international legal order; therefore, it was important to take up its consideration as soon as possible.

44. Another representative suggested that the Special Committee take up consideration of the review of the fulfilment of the functions and responsibilities of the Security Council in accordance with the Charter and the provisional rules of procedure of that organ; and of measures to improve the fulfilment of the functions and responsibilities of the General Assembly in accordance with Article 10 of the Charter.

45. At the end of the discussion, the Chairman concluded that the Special Committee would continue its consideration of the Soviet working paper at its session the following year before deciding which of the proposals contained in it should be included in the agenda of the Committee.

46. At the 150th meeting of the Special Committee, on 20 February 1991, the Union of Soviet Socialist Republics presented a specific proposal relating to paragraph 1 (a), which is set out below:

"Working document of the Union of Soviet Socialist Republics on the enhancement of cooperation between the United Nations and regional organizations

"1. The basic function of regional organizations under the Charter of the United Nations is to deal with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such regional organizations and their activities are consistent with the purposes and principles of the Organization.

"2. Measures to create and enhance regional security systems, bearing in mind the specific characteristics and new realities of the regions concerned, must run parallel with the efforts of the entire international community to establish collective security in accordance with the Charter of the United Nations.

"3. Regional agencies and arrangements should perform broad functions for the maintenance of international peace and security and also possess their own mechanisms for the pacific settlement of disputes through negotiation, investigation, mediation, conciliation, good offices, judicial consideration and arbitration, as well as through the assignment of appropriate specific functions in that regard to the regional organizations' permanent organs.

"4. The settlement of disputes through regional agencies or arrangements shall be based on a free choice of such specific measures by the parties to a local dispute, the objective being, in the first instance, to utilize procedures for the settlement of disputes provided for in a specific regional instrument.

"5. The States members of regional organizations shall make every effort to achieve pacific settlement of local disputes through regional organizations before referring them to the Security Council.

"6. The Security Council shall encourage the development of pacific settlement of local disputes through regional organizations either on the initiative of the States concerned or on its own initiative.

"7. The settlement of disputes by States members of regional arrangements through such organizations shall be without prejudice to the authority of the Security Council to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in accordance with Article 34 of the Charter, or to the right of any Member of the Organization, under Article 35 of the Charter, to bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

"8. The Security Council shall, where appropriate, utilize regional organizations for enforcement action under its authority, but no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

"9. The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

"10. States must endeavour to create and to enhance the effectiveness of regional security mechanisms for the pacific settlement of disputes in accordance with the Charter of the United Nations.

"11. Apart from matters relating to the pacific settlement of disputes and the maintenance of international peace and security in their respective regions, regional organizations must also address the political, economic and humanitarian aspects of security and the development of broad international cooperation.

"12. States shall encourage an increase in the practical contribution made by regional organizations to the achievement of political, economic, social and cultural progress by the peoples of the respective regions in overcoming hunger, illiteracy, poverty, destitution, disease and economic underdevelopment.

"13. States must promote the strengthening and improvement of cooperation and interaction between the United Nations and regional organizations with respect to the development of broad international cooperation and the maintenance of international peace and security.

"14. The Secretary-General of the United Nations and the leaders of regional organizations must meet on a regular basis to exchange information on such local disputes and situations as may constitute a threat to international peace and security, propose joint initiatives for the settlement of local disputes and also consider specific problems relating to the political, economic, social and cultural development of any country in the region concerned.

"15. Regional organizations must provide the countries of the respective regions, if they so request, with assistance in strengthening their security in accordance with the purposes and principles of the Charter.

> "16. The Security Council or its permanent members may, where appropriate and at the request of the regional organizations, act as guarantors of regional security."

47. In presenting the above document, the representative emphasized that it developed one of the proposals originally put forward by his delegation and broadly supported by the Special Committee, namely, the enhancement of cooperation between the United Nations and regional organizations. The representative pointed out that mechanisms of regional security were an internal part of the collective security system established by the Charter, stressed that their consideration came at a time when the role of regional organizations in the area of collective security was becoming increasingly important and encouraged Member States to state their views and comments on the working paper at future sessions of the General Assembly of the United Nations and of the Special Committee.

IV. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

Statement of the Rapporteur

Examination of the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States [4]

48. The Special Committee had before it, as requested by the General Assembly in paragraph 6 of its resolution 45/44 of 28 November 1990, the Secretary-General's final progress report on the preparation of the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.68), to which the complete text of the draft handbook, except annexes, an index and a bibliography, was attached. The progress report contained information on the final meeting of the Consultative Group on the Handbook on the Peaceful Settlement of Disputes between States, held in New York on 19 June 1990, under the chairmanship of the Under-Secretary-General, the Legal Counsel. At that meeting, the Consultative Group, composed of competent individuals from among members of the permanent missions of the States Members of the United Nations in New York, reviewed the draft of the remaining chapter of the handbook, prepared by the Secretariat, chapter III, which was entitled "Procedures envisaged under the Charter of the United Nations; primary role of the Security Council; important role of the General Assembly; role of other principal organs of the United Nations". Having held a total of eight meetings, the Consultative Group thus completed the consideration of all the chapters of the draft handbook.

49. At the 146th meeting of the Special Committee, on 8 February 1991, the Legal Counsel introduced the final progress report of the Secretary-General.

50. In the course of the discussion of the report, many delegations expressed their appreciation to the Secretariat for its work on the handbook. They also paid tribute to the delegation of France, which had originally proposed the preparation of such a handbook. They emphasized that the practical nature of the handbook made it particularly useful not only for Governments, especially in developing countries, but also for researchers and academic institutions everywhere. It was further pointed out that the merit of the handbook was that it had been drawn up in strict conformity with the Charter, and that it analysed both the less-known means of peaceful settlement of disputes and the well-known means. It was important, in the view of the delegations, that the handbook, once published, should be widely distributed.

51. Most delegations also considered the handbook to be an important and concrete contribution of the Special Committee to the United Nations Decade of International Law. In that connection, the view was expressed that the handbook would serve as a useful basis for the drafting of a universal convention on the peaceful settlement of disputes within the framework of the Decade. It was accordingly suggested that a reference to the United Nations Decade of International Law be made in the introduction to the handbook in its final form.

---

[4] There were no other documents submitted to the Special Committee under the topic of the peaceful settlement of disputes.

52. Some suggestions for improving and updating the text before its final publication were made. 5/ One delegation expressed its view that the publication and wider dissemination of the handbook should be done after incorporation of all amendments. Several delegations referred to the usefulness of the novel procedure followed in the preparation of the handbook which established a close cooperation between the Secretariat and members of permanent missions in New York as a Consultative Group and expressed the hope that such a procedure would be used in similar future endeavours.

53. At its 146th meeting, on 8 February 1991, the Special Committee, having taken note of the final progress report of the Secretary-General and, having considered the final text of the draft handbook pursuant to paragraph 3 (b) (ii) of General Assembly resolution 45/44, recommended the publication of the draft handbook annexed hereto to the General Assembly at its forty-sixth session.

5/ In its final form, the handbook will include an index, a bibliography and annexes (the Charter of the United Nations, the Statute of the International Court of Justice and the Rules of the International Court of Justice).

V. COMMUNICATIONS ADDRESSED TO THE CHAIRMAN ON ISSUES BEARING UPON THE WORK OF THE COMMITTEE

Statement of the Rapporteur

A. United Nations Decade of International Law

54. At the 146th and 149th meetings of the Special Committee, the Chairman informed the Committee of the letter dated 30 January 1991 from Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, drawing the attention of the Chairman to certain paragraphs of the programme of activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law, presented in the annex to General Assembly resolution 45/40 of 28 November 1990, which related to the mandate of the Special Committee.

55. The Chairman informed the Committee of his intention to respond to the letter by pointing out that the Committee, at its 1991 session, had already made a concrete contribution to the United Nations Decade of International Law when it approved the draft handbook on the peaceful settlement of disputes and the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security for submission to the General Assembly at its forty-sixth session for consideration and adoption.

56. The Special Committee endorsed the views of the Chairman as stated above and expressed its willingness to make further contributions to the programme of the Decade within the context of its mandate.

B. Committee on Conferences

57. At the 150th meeting of the Special Committee, the Chairman informed the Committee of the letter dated 31 December 1990 which he had received from the Chairman of the Committee on Conferences, drawing the attention of the Special Committee to the recommendations and conclusions contained in the report of the Committee on Conferences (A/AC.172/88/Add.8) relating to the utilization of resources by the Special Committee.

58. The Chairman informed the Special Committee of his intention to reply to the letter by advising the Chairman of the Committee on Conferences that the Special Committee would continue to do its utmost to improve its utilization of the conference-servicing resources and that, in that respect, all the recommendations contained in the letter would be taken into consideration when planning the work of the Special Committee. He would however point out to the Committee on Conferences that the Special Committee could not agree with one of the conclusions contained in the said letter stating that "the Special Committee at its 1989 session used 57 per cent of its resources, which falls short of the 75 per cent benchmark figure set by the Committee in 1983 and reaffirmed in 1989". It was the view of the Special Committee that the above conclusion was apparently made on the basis of statistical data which did not take into account the method of work followed by the Special Comittee, namely, the wide use of informal consultations and of working groups for the purposes of negotiating texts for consideration and adoption by the

plenary of the Committee. That effective method of work had indeed enabled the Special Committee to produce a number of concrete results in fulfilment of its mandate. The Special Committee accordingly urged that the Committee on Conferences should be made aware of those facts.

Annex

HANDBOOK ON THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

CONTENTS

Chapter	Paragraphs	Page
INTRODUCTION		30
I. PRINCIPLE OF THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES	1 - 20	31
A. Charter of the United Nations	1	31
B. Declarations and resolutions of the General Assembly	2	31
C. Corollary and related principles	3 - 18	31
D. Free choice of means	19 - 20	35
II. MEANS OF SETTLEMENT	21 - 312	36
A. Negotiations and consultations	21 - 73	36
1. Main characteristics	22 - 26	36
2. Initial phase	27 - 36	37
3. Conduct of the negotiating process	37 - 67	39
(a) Framework of the negotiating process	37 - 43	39
(b) Place of negotiations	44 - 46	41
(c) Degree of publicity of the proceedings	47 - 49	42
(d) Duration of the negotiation process	50 - 51	42
(e) Attitude of the parties	52 - 58	43
(f) Steps aimed at facilitating the negotiating process through the involvement of a third party	59 - 64	45
(g) Question whether the existence of an ongoing negotiation process precludes resort to another peaceful settlement procedure	65 - 67	47
4. Outcome of the negotiations and possible subsequent steps	68 - 73	48

CONTENTS (continued)

Chapter	Paragraphs	Page
B. Inquiry	74 - 100	51
1. Functions and relation to other peaceful means under the Charter of the United Nations	74 - 82	51
2. Initiation and methods of work	83 - 86	55
3. Composition and other institutional aspects	87 - 98	56
4. Outcome of the process	99 - 100	59
C. Good offices	101 - 122	60
1. Main characteristics, legal framework and relation to other peaceful means under the Charter of the United Nations	101 - 104	60
2. Functions	105 - 110	62
3. Application of the method	111 - 115	64
4. Institutional and related aspects	116 - 120	67
(a) Initiation of the procedure	116 - 117	67
(b) Methods of work and venue	118 - 120	67
5. Termination and outcome of the process	121 - 122	67
D. Mediation	123 - 139	68
1. Main characteristics and legal framework	123 - 126	68
2. Functions	127 - 128	69
3. Procedural and institutional aspects	129 - 137	69
4. Outcome of the process	138 - 139	72
E. Conciliation	140 - 167	72
1. Main characteristics, legal framework and relation to other peaceful means under the Charter of the United Nations	140 - 143	72
2. Functions	144 - 146	74
3. Application of the method	147 - 149	75

CONTENTS (continued)

Chapter Paragraphs Page

4. Institutional and related aspects .... 150 - 163 76

  (a) Composition .... 150 - 153 76

  (b) Initiation of the process .... 154 - 155 78

  (c) Rules of procedure and methods of work .... 156 - 158 79

  (d) Duration and termination .... 159 - 160 80

  (e) Expenses and other financial arrangements 161 80

  (f) Venue and secretariat of the commission .... 162 - 163 81

5. Termination and outcome of the process .... 164 - 167 81

F. Arbitration .... 168 - 195 82

1. Main characteristics and legal framework .... 168 - 173 82

2. Institutional and related aspects .... 174 - 191 85

  (a) Types of arbitration agreements .... 174 - 177 85

  (b) Composition .... 178 - 179 87

  (c) Rules of procedure 180 89

  (d) Applicable law .... 181 - 182 91

  (e) Methods of work and proceedings before the tribunal .... 183 - 186 92

  (f) Seat and administrative aspects of an arbitral tribunal .... 187 - 189 93

  (g) Expenses of an arbitral tribunal .... 190 - 191 94

3. Outcome of arbitration and related issues .... 192 - 195 94

G. Judicial settlement .... 196 - 229 96

1. Main characteristics, legal framework and functions 196 - 199 96

2. Resort to judicial settlement .... 200 - 201 98

CONTENTS (continued)

Chapter		Paragraphs	Page
	3. Institutional and procedural aspects	202 - 228	102
	(a) Jurisdiction, competence and initiation of the process	202 - 212	102
	(b) Access and third-party intervention	213 - 214	107
	(c) Composition	215 - 217	108
	(d) Rules of procedure	218 - 224	110
	(e) Seat and administrative aspects	225 - 227	112
	(f) Expenses and other financial arrangements	228	113
	4. Outcome of judicial settlement	229	114
H.	Resort to regional agencies or arrangements	230 - 287	114
	1. Main characteristics, legal framework and relation to other means of peaceful settlement provided for by Article 33 of the Charter of the United Nations .	230 - 237	114
	2. Institutional arrangements, competence and procedure	238 - 271	116
	(a) League of Arab States	239 - 241	117
	(b) Organization of American States	242 - 245	117
	(c) Organization of African Unity	246 - 250	119
	(d) European Convention for the Peaceful Settlement of Disputes (Council of Europe)	251 - 254	120
	(e) Conference on Security and Cooperation in Europe	255 - 258	121
	(f) European and inter-American systems for the protection of human rights	259 - 262	122
	(g) African Charter on Human and Peoples' Rights ..	263	124
	(h) European Communities	264 - 267	125
	(i) Economic Community of West Africa	268	126
	(j) Agreements on shared management of resources ..	269 - 271	126

CONTENTS (continued)

Chapter	Paragraphs	Page
3. Actual resort to regional agencies or arrangements in dispute settlement	272 - 287	127
(a) League of Arab States	273 - 276	127
(b) Organization of American States	277 - 281	128
(c) Organization of African Unity	282 - 283	129
(d) European Convention for the Peaceful Settlement of Disputes (Council of Europe)	284	130
4. Relations between regional agencies or arrangements and the United Nations in the field of the peaceful settlement of local disputes	285 - 287	131
I. Other peaceful means	288 - 312	133
1. Main characteristics and legal framework	288	133
2. Resort to other peaceful means	289	133
(a) Novel means which do not consist in the adaptation or combination of familiar means	290 - 295	134
(b) Adaptations of familiar means	296 - 305	137
(c) Combination of two or more familiar means in the work of a single organ	306 - 312	142
III. PROCEDURES ENVISAGED IN THE CHARTER OF THE UNITED NATIONS	313 - 381	147
A. Introduction	313 - 315	147
B. The Security Council	316 - 351	147
1. Role of the Security Council in the peaceful settlement of disputes	316 - 335	147
(a) Investigation of disputes and determination as to whether a situation is in fact likely to endanger international peace and security	319 - 321	148
(b) Recommendation to States parties to a dispute to settle their disputes by peaceful means	322 - 332	150
(c) Relation to procedures under regional agencies or arrangements	333 - 335	156
2. Recent trends	336 - 351	157

CONTENTS (continued)

Chapter Paragraphs Page

C. The General Assembly .... 352 - 366 161

1. Role of the General Assembly in the peaceful settlement of disputes .... 352 - 362 161

(a) Discussion of questions and making recommendations on matters relating to the peaceful settlement of disputes .... 353 - 360 161

(b) Recommendation of measures for the peaceful adjustment of situations .... 361 - 362 165

2. Recent trends .... 363 - 366 166

D. The Secretariat .... 367 - 381 167

1. Role of the Secretary-General .... 367 - 374 167

(a) Functions of the Secretary-General in the implementation of the resolutions of other principal organs in the field of the prevention or settlement of disputes .... 368 - 370 167

(b) Diplomatic functions 371 169

(c) Functions of the Secretary-General based on the powers expressly conferred upon him by the Charter .... 372 - 374 169

2. Recent trends .... 375 - 381 171

IV. PROCEDURES ENVISAGED IN OTHER INTERNATIONAL INSTRUMENTS .... 382 - 430 173

A. Introduction .... 382 - 385 173

B. Procedures envisaged in the constituent instruments of international organizations of a universal character other than the United Nations .... 386 - 417 173

1. Procedures envisaged in economic and financial organizations .... 387 - 406 174

2. Procedures envisaged in the constitutions of other international organizations with specialized activities .... 407 - 417 181

CONTENTS (continued)

Chapter | Paragraphs | Page

C. Procedures envisaged in multilateral treaties creating no permanent institutions .... 418 - 430 187

1. Conventions containing optional procedures for dispute settlement .... 419 - 421 188

2. Conventions containing non-compulsory and compulsory procedures in which both the International Court of Justice and an arbitral tribunal are established as choices for judicial settlement 422 189

3. Conventions in which resort to the International Court of Justice is the only compulsory judicial settlement procedure .... 423 - 424 191

4. Conventions in which arbitration is the only compulsory procedure for judicial settlement 425 192

5. Conventions in which conciliation is the only third-party compulsory procedure 426 193

6. Conventions combining adjudication and conciliation as compulsory procedures .... 427 - 429 194

7. Conventions which rely on panels of experts for resolving technical disputes 430 195

ANNEX I: Charter of the United Nations and the Statute of the International Court of Justice. [to be issued in the final version]

ANNEX II: Rules of the International Court of Justice of 14 April 1978. [to be issued in the final version]

BIBLIOGRAPHY 197

INDEX 212

INTRODUCTION

By its resolutions 39/79 and 39/88 of 13 December 1984, the General Assembly requested the Secretary-General to prepare, on the basis of the outline elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and in the light of the views expressed in the course of the discussions in the Sixth Committee and in the Special Committee, a draft handbook on the peaceful settlement of disputes between States.

In accordance with the conclusions reached by the Special Committee at its 1984 session with respect to the preparation of the draft handbook, the Secretary-General was instructed to consult periodically a representative group of competent individuals from among the members of the Permanent Missions of the States Members of the United Nations in order to obtain assistance in the performance of his task. 1/ At the 1985 session, it was agreed that the "representative group of competent individuals from among the members of the Permanent Missions of the States Members of the United Nations" would be open to all members of the Special Committee and that the group would have purely consultative functions. 2/

The Secretary-General accordingly consulted the above-mentioned representative group in preparing the various chapters of the handbook. The handbook in its final form was approved by the Special Committee at its 1991 session.

The purpose of the handbook is to contribute to the peaceful settlement of disputes between States and to help to increase compliance with international law by providing States parties to a dispute, particularly those States which do not have the benefit of long-established and experienced legal departments, with the information they might need to select and apply procedures best suited to the settlement of particular disputes.

The handbook has been prepared in strict conformity with the Charter of the United Nations. It is descriptive in nature and is not a legal instrument. Although drawn up on consultation with Member States, it does not represent the views of Member States.

In conformity with the above-mentioned resolutions, the scope of the handbook was to be limited to disputes between States, excluding those disputes which although involving States fell under municipal law or were within the competence of domestic courts. However, at the request of the Consultative Group to the Secretary-General, 3/ the draft handbook now includes disputes to which subjects of law other than States may be parties.

1/ Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 33 (A/39/33), para. 133 (a) (2).

2/ Ibid., Fortieth Session, Supplement No. 33 (A/40/33), para. 58 (a) and (c).

3/ A/AC.182/L.61, para. 6.

I. PRINCIPLE OF THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

A. Charter of the United Nations

1. The Charter of the United Nations provides in its Chapter I (Purposes and principles) that the Purposes of the United Nations are:

> "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." (Article 1, paragraph 1)

The Charter also provides in the same Chapter that the Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with, among others, the following principle: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered" (Article 2, paragraph 3). It furthermore, in Chapter VI (Pacific settlement of disputes), states that:

> "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." (Article 33, paragraph 1)

B. Declarations and resolutions of the General Assembly

2. The principle of the peaceful settlement of disputes has been reaffirmed in a number of General Assembly resolutions, including resolutions 2627 (XXV) of 24 October 1970, 2734 (XXV) of 16 December 1970 and 40/9 of 8 November 1985. It is dealt with comprehensively in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV), annex), in the section entitled "The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered", as well as in the Manila Declaration on the Peaceful Settlement of International Disputes (resolution 37/10, annex) and in the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this field (resolution 43/51, annex).

C. Corollary and related principles

3. The principle of the peaceful settlement of international disputes is linked to various other principles of international law. It may be recalled in this connection that under the Declaration on Friendly Relations, the principles dealt with in the Declaration - namely, the principle that States shall refrain in their international relations from the threat or use of force against the territorial

integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; the duty of States to cooperate with one another in accordance with the Charter; the principle of equal rights and self-determination of peoples; the principle of sovereign equality of States; and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter - are interrelated in their interpretation and application and each principle should be construed in the context of other principles.

4. The Final Act of the Conference on Security and Cooperation in Europe, adopted at Helsinki on 1 August 1975, states that all the principles set forth in the Declaration on Principles Guiding Relations between Participating States - i.e., Sovereign equality, respect for the rights inherent in sovereignty; refraining from the threat or use of force; inviolability of frontiers; territorial integrity of States; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; equal rights and self-determination of peoples; cooperation among States; and fulfilment in good faith of obligations under international law - "are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into account the others."

5. The links between the principle of the peaceful settlement of disputes and other specific principles of international law are highlighted both in the Friendly Relations Declaration and in the Manila Declaration, as follows:

1. Principle of non-use of force in international relations

6. The interrelation between this principle and the principle of the peaceful settlement of disputes is highlighted in the fourth preambular paragraph of the Manila Declaration and is also referred to in section I, paragraph 13, thereof, under which neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute.

7. The links between the principle of peaceful settlement of disputes and the principle of non-use of force are also highlighted in a number of other international instruments, including the 1945 Pact of the League of Arab States (art. 5), the 1948 American Treaty on Pacific Settlement (Pact of Bogotá) (art. I), the 1947 Inter-American Treaty of Reciprocal Assistance (arts. 1 and 2) and the last paragraph of section II of the Declaration on Principles Guiding Relations between Participating States contained in the Final Act of the Conference on Security and Cooperation in Europe.

2. Principle of non-intervention in the internal or external affairs of States

8. The interrelation between this principle and the principle of the peaceful settlement of disputes is highlighted in the fifth preambular paragraph of the Manila Declaration.

9. The links between the principle of peaceful settlement of disputes and the principle of non-intervention are also highlighted in article V of the 1948 Pact of Bogotá.

3. Principle of equal rights and self-determination of peoples

10. The links between this principle and the principle of peaceful settlement of disputes are highlighted in the Manila Declaration which (1) reaffirms in its eighth preambular paragraph the principle of equal rights and self-determination as enshrined in the Charter and referred to in the Friendly Relations Declaration and in other relevant resolutions of the General Assembly; (2) stresses in its ninth preambular paragraph the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist regimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence; (3) refers in section I, paragraph 12, to the possibility for parties to a dispute to have recourse to the procedures mentioned in the Declaration "in order to facilitate the exercise by the peoples concerned of the right to self-determination"; and (4) declares in its penultimate paragraph that "nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial or racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration".

4. Principle of the sovereign equality of States

11. The links between this principle and the principle of the peaceful settlement of disputes are highlighted in the fifth paragraph of the relevant section of the Friendly Relations Declaration which provides that "International disputes shall be settled on the basis of the sovereign equality of States" as well as in section I, paragraph 3, of the Manila Declaration.

5. Principles of international law concerning the sovereignty, independence and territorial integrity of States

12. Paragraph 4 of section I of the Manila Declaration enunciates the duty of States parties to a dispute to continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States.

6. Good faith in international relations

13. The Manila Declaration enunciates in its section I, paragraph 1, the duty of States to "act in good faith", with a view to avoiding disputes among themselves likely to affect friendly relations among States. Other references to good faith are to be found in paragraph 5, under which good faith and a spirit of cooperation are to guide States in their search for an early and equitable settlement of their disputes; in paragraph 11, which provides that States shall in accordance with international law implement in good faith all the provisions of agreements concluded by them for the settlement of their disputes; in paragraph 2 of section II, under which Member States shall fulfil in good faith the obligations assumed by them in accordance with the Charter of the United Nations; and in one of the concluding paragraphs of the Declaration, whereby the General Assembly urges all States to observe and promote in good faith the provisions of the Declaration in the peaceful settlement of their international disputes.

14. A provision similar to paragraph 5 of section I of the Manila Declaration is to be found in the third paragraph of section V of the Declaration on Principles Guiding Relations between Participating States contained in the Final Act of the Conference on Security and Cooperation in Europe.

7. Principles of justice and international law

15. The "principles of international law" are mentioned together with the principles of justice in Article 1, paragraph 1, of the Charter under which one of the purposes of the United Nations is "to bring about, by peaceful means, and *in conformity with the principles of justice and international law*, adjustment or settlement of international disputes or situations which might lead to a breach of the peace". (emphasis added) The principles of international law are also mentioned jointly with the principles of justice in section I, paragraph 3, of the Manila Declaration under which "international disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and *with the principles of justice and international law*." (emphasis added)

16. Paragraph 4 of section I of the Manila Declaration provides that "States parties to a dispute shall continue to observe in their mutual relations ... generally recognized *principles and rules of contemporary international law*." (emphasis added)

17. "Justice" is referred to in Article 2, paragraph 3, of the Charter and in the first paragraph of the relevant section of the Friendly Relations Declaration, both of which provide for the settlement of international disputes "by peaceful means in such a manner that international peace and security *and justice* are not endangered." (emphasis added)

8. Other corollary and related principles and rules

18. In its tenth preambular paragraph, the Manila Declaration singles out among "respective principles and rules concerning the peaceful settlement of international disputes", "the exhaustion of local remedies whenever applicable". Article VII of the 1948 Pact of Bogotá contains a similar provision.

D. Free choice of means

19. The principle of free choice of means is laid down in Article 33, paragraph 1, of the Charter of the United Nations and reiterated in the fifth paragraph of the relevant section of the Friendly Relations Declaration and in section I, paragraphs 3 and 10, of the Manila Declaration. As indicated above, both the Friendly Relations Declaration and the Manila Declaration make it clear that recourse to, or acceptance of, a settlement procedure freely agreed to with regard to existing or future disputes shall not be regarded as incompatible with the sovereign equality of States. The principle of free choice of means has also found expression in a number of other international instruments, including the Pact of Bogotá (art. III) and the Declaration on Principles Guiding Relations between Participating States, contained in the Final Act of the Conference on Security and Cooperation in Europe (third para. of sect. V).

20. The following means are listed in Article 33 of the Charter, in the second paragraph of the relevant section of the Friendly Relations Declaration and in paragraph 5 of section I of the Manila Declaration: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of the parties' own choice. Among those "other peaceful means", the Manila Declaration singles out good offices. Under the Friendly Relations Declaration (second paragraph of the relevant section) and the Manila Declaration (para. 5 of sect. I), it is for the parties to agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

II. MEANS OF SETTLEMENT

A. *Negotiations and consultations*

21. Referring to negotiation, the International Court of Justice remarked that "there is no need to insist upon the fundamental character of this method of settlement". 1/ It observed in this connection, 2/ as did its predecessor, the Permanent Court of International Justice, 3/ that, unlike other means of settlement, negotation which leads to "the direct and friendly settlement of ... disputes between parties" is universally accepted. Furthermore, negotiations are usually a prerequisite to resort to other means of peaceful settlement of disputes. This was recognized as far as arbitral or judicial proceedings were concerned by the Permanent Court in the following words: "Before a dispute can be made the subject of an action at law, its subject matter should have been clearly defined by diplomatic negotiations." 4/, 5/ It should be noted that the term "diplomacy" is used in some treaties, such as the 1949 Revised General Act for the Pacific Settlement of International Disputes, as a synonym of "negotiations", as is also the phrase "through the usual diplomatic channels" as it appears, for instance, in the 1948 Charter of the Organization of American States.

1. *Main characteristics*

Negotiations

22. The Manila Declaration on the Peaceful Settlement of International Disputes highlights flexibility as one of the characteristics of direct negotiations as a means of peaceful settlement of disputes (sect. I, para. 10). Negotiation is a flexible means of peaceful settlement of disputes in several respects. It can be applied to all kinds of disputes, whether political, legal or technical. Because, unlike the other means listed in Article 33 of the Charter, it involves only the States parties to the dispute, those States can monitor all the phases of the process from its initiation to its conclusion and conduct it in the way they deem most appropriate.

1/ *I.C.J. Reports 1969*, p. 48, para. 86.

2/ In its judgment in the *North Sea Continental Shelf* case, ibid.

3/ In its Order of 19 April 1929 in the case of the *Free Zones of Upper Savoy and the District of Gex* (*P.C.I.J.*, Series A, No. 22, p. 13).

4/ *P.C.I.J.*, Series A, No. 2, p. 15.

5/ The question of the place which negotiation occupies among other means of peaceful settlement of disputes was discussed *inter alia* in the framework of the United Nations Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation among States. For a summary of the arguments advanced on this question within the Special Committee, see *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746, paras. 156, 158 and 161-163 and ibid., *Twenty-first Session, Annexes*, agenda item 87, document A/6230, paras. 195-206.

23. Another characteristic of negotiation highlighted by the Manila Declaration is effectiveness (sect. I, para. 10). Suffice it to say in this connection that in the reality of international life, negotiation, as one of the means of peaceful settlement of disputes is most often resorted to by States for solving contentious issues and that, while it is not always successful, it does solve the majority of disputes.

Consultations

24. Consultations may be considered as a variety of negotiations. While they are not mentioned in Article 33 of the Charter, they are provided for in a growing number of treaties as a means of settling disputes arising from the interpretation or application of the treaty concerned. Mention may be made in this connection of article 84 of the 1975 Convention on the Representation of States in their Relations with International Organizations of a Universal Character, which provides for the holding of consultations at the request of any of the parties, as well as of article 41 of the 1978 Convention on Succession of States in Respect of Treaties and article 42 of the 1983 Convention on the Succession of State Property, Archives and Debts, both of which provide for "a process of consultation and negotiation".

25. In other treaties, consultations are provided for as a preliminary phase in the process of settlement of disputes. Reference is made in this connection to article XI of the 1959 Antarctic Treaty, article 17 of the 1979 Convention on the Physical Protection of Nuclear Material and article XXV of the 1980 Convention on the Conservation of Antarctic Marine Living Resources, which provide, in case of disputes, that the States parties shall consult among themselves with a view to the settlement of the dispute by peaceful means.

Exchanges of views

26. Exchanges of views may also be considered as a form of consultations. They play an important role in the system established by the 1982 United Nations Convention on the Law of the Sea for the peaceful settlement of disputes arising from the interpretation and application of the Convention. Reference is made in this connection to article 283 of the Convention, which reads as follows:

> "1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
>
> "2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement."

2. Initial phase

27. Normally, the negotiating process starts as the result of one State perceiving the existence of a dispute and inviting another State to enter into negotiations for its settlement. The start of the negotiating process is conditional upon the acceptance by the other State of such an invitation. It may occur that a State

invited to enter into negotiations has valid reasons to believe that there is no dispute to negotiate and that there is, therefore, no basis for the opening of negotiations. It may also occur that a State, while agreeing to enter into negotiations, subjects the opening of negotiations to conditions unacceptable to the first State. The discretion of States with respect to the initiation of the negotiating process is, however, subject to certain limitations.

28. A number of treaties place on the States Parties thereto an obligation to carry out "negotiations", "consultations", or "exchanges of views" whenever a controversy arises in connection with the treaty concerned. Examples of such treaties are the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex, art. 15, para. 1), the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (art. 84), the 1982 United Nations Convention on the Law of the Sea (art. 283, para. 1) and the 1959 Antarctic Treaty (art. VIII, para. 2). Under some of those treaties, parties to a dispute arising from the interpretation or application of the treaty are under an obligation to start the consultation or negotiation process without delay (see art. 283, para. 1, of the United Nations Convention on the Law of the Sea; art. 15, para. 2, of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies; and art. VIII, para. 2, of the Antarctic Treaty).

29. Furthermore, many treaties providing for peaceful settlement procedures make resort to the third party means of settlement envisaged in the treaty conditional upon failure of negotiations. This approach is to be found in some treaties specifically concluded for the settlement of all disputes which may arise among the States parties thereto, such as for example, the 1949 Revised General Act for the Pacific Settlement of International Disputes (art. I).

30. This approach is also to be found in the dispute settlement clause of many multilateral treaties, such as article 4 of the 1948 Convention on the International Maritime Organization, and article VIII of the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

31. It should furthermore be pointed out that the setting in motion of the negotiating process can be encouraged by international organizations. Aside from the fact that such organizations provide a meeting place where representatives of States parties to a dispute can get together and conduct formal or informal discussions with a view to settling the dispute, organs of an international organization may contribute to the opening of negotiations by addressing to the parties recommendations to that effect.

32. In the case of the United Nations, the General Assembly may, as is recalled in section II, paragraph 3 (a), of the Manila Declaration, "discuss any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations and, subject to Article 12 of the Charter, recommend measures for its peaceful settlement". The means of settlement which the General Assembly has most frequently recommended to the parties to a dispute is negotiation. Reference is made in this respect to resolution 40/9 of 8 November 1985, in which the Assembly addressed a solemn appeal to States in conflict to proceed to the settlement of their disputes by negotiations and other peaceful means.

33. In addressing such recommendations to the parties, the General Assembly has often asked them to take account in their negotiations of specific elements such as the purposes and principles of the Charter; the objectives of resolution 1514 (XV) of 14 December 1960 (Declaration on the Granting of Independence to Colonial Countries and Peoples); the interests of the people concerned; the right to self-determination and independence; and the principle of national unity and territorial integrity.

34. In accordance with its responsibilities under the Charter of the United Nations in the area of peaceful settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security, the Security Council has on a number of occasions adopted resolutions calling upon States to enter into negotiations.

35. The furtherance of negotiations between the parties to a dispute is but a limited aspect of the role which the United Nations and other international organizations play in the peaceful settlement of disputes. This role is dealt with comprehensively in chapter III of the present handbook, as far as the United Nations is concerned, and in chapter IV, as regards other international organizations.

36. It should finally be noted that the parties may be directed to negotiate by a judicial decision binding upon them. Reference is made in this connection to the *Fisheries Jurisdiction* cases, in which the International Court of Justice stated the following:

> "75. The obligation to negotiate thus flows from the very nature of the respective rights of the Parties; to direct them to negotiate is therefore a proper exercise of the judicial function in this case. This also corresponds to the Principles and provisions of the Charter of the United Nations concerning peaceful settlement of disputes. As the Court stated in the *North Sea Continental Shelf* cases:
>
> > '... this obligation merely constitutes a special application of a principle which underlies all international relations, and which is moreover recognized in Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of international disputes'" (*I.C.J. Reports 1969*, p. 47, para. 86). 6/

3. Conduct of the negotiating process

(a) Framework of the negotiating process

(i) Bilateral negotiations

37. Bilateral negotiations are traditionally conducted directly between duly appointed representatives or delegations or through written correspondence and have been greatly facilitated in modern times by the development of telecommunications and means of transportation. While the negotiators are often ministers of foreign

---

6/ *I.C.J. Reports 1974*, p. 32.

affairs - or officials of the foreign ministries - of the parties, practice offers many instances of disputes settled by specialized negotiators. There are instances where Heads of State or Government are involved either at the initial stage of the negotiations - with the process being subsequently conducted at a lower level - or, conversely, at the concluding stage, after negotiations have been concluded at the expert level. The question of the respective ranks of the negotiators may be relevant to the extent that one side insists that the other side should be represented at the same level.

38. There are many examples of bilateral negotiations conducted in the framework of diplomatic joint commissions, particularly for the settlement of territorial or waterway disputes. It should be noted that disputes relating to international waterways are often dealt with in the framework of standing joint commissions established by treaties. 7/

39. Permanent diplomatic missions often play an important role in presenting the position of their respective Governments in negotiations with the foreign ministry of the State to which they are accredited. Furthermore, States parties to a dispute which do not maintain diplomatic relations may find it convenient to carry on negotiations for the settlement of the dispute through their respective diplomatic missions to a third country or their permanent missions to the United Nations. The eventuality of absence of diplomatic relations between States parties to a dispute is envisaged in article 15 of the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, paragraph 3 of which reads in part:

> "A State Party which does not maintain diplomatic relations with another State Party concerned shall participate in such consultations, at its choice, either itself or through another State Party or the Secretary-General as intermediary."

40. Individuals having no governmental position such as former ministers, university rectors, etc., may, in certain cases, be entrusted with the conduct of bilateral negotiations or with laying the ground for negotiations proper.

(ii) Plurilateral or multilateral negotiations

41. When several States are parties to a dispute, an international conference may provide the framework for the negotiating process. There are examples of conferences convened at the invitation of one of the parties and in which one or

---

7/ For an analysis of the many waterway treaties providing for the establishment of standing joint commissions, see Yearbook of the International Law Commission, 1974, vol. II (Part II) (United Nations publications, Sales No. E.75.V.7 (Part II)), document A/5409, "Legal problems relating to the utilization and use of international rivers: report of the Secretary-General", and document A/CN.4/274, "Legal problems relating to the non-navigational uses of international watercourses: supplementary report of the Secretary-General". Those standing joint commissions in which each side is represented by an equal number of government-appointed representatives and which seek to settle disputes within their competence through negotiations - failing which the matter is referred to the States concerned for decision - are very similar to ad hoc diplomatic commissions.

several of the other parties refrained from taking part. States having an interest in the settlement of a dispute but not parties to it may hold a conference without the participation of the parties to study the dispute and make proposals for its settlement. In the absence of one or several of the parties, no negotiation is possible but such conferences may, if their recommendations commend themselves to the parties, bring to the settlement of the dispute a contribution akin to good offices or mediation.

(iii) "Collective negotiations"

42. The framework of the negotiating process can also be an international organization. Reference is made in this connection to the judgment of the International Court of Justice in the South West Africa cases (Preliminary Objections) in which the Court stated the following in response to the contention, by the respondent, that collective negotiations in the United Nations were one thing and direct negotiations between it and the appellants were another:

> "... diplomacy by conference or parliamentary diplomacy has come to be recognized in the past four or five decades as one of the established modes of international negotiation. In cases where the disputed questions are of common interest to a group of States on one side or the other in an organized body, parliamentary or conference diplomacy has often been found to be the most practical form of negotiation. The number of parties to one side or the other of a dispute is of no importance; it depends upon the nature of the question at issue. If it is one of mutual interest to many States, whether in an organized body or not, there is no reason why each of them should go through the formality and pretence of direct negotiations with the common adversary State after they have already fully participated in collective negotiations with the same State in opposition." 8/

43. Examples of "organized bodies" in the framework of which such "collective negotiations" can be carried out for the peaceful settlement of disputes will be found in chapters III and IV below.

(b) Place of negotiations

44. Bilateral or plurilateral negotiations usually take place in the capital city of one of the parties. They may also be held alternately in each of the capitals. In the case of neighbouring States, a locality close to the common border may be selected.

45. A city, or a series of cities, outside the respective territories of the parties may provide the forum for negotiations, particularly if there are no diplomatic relations between the parties or if, as a result of the dispute, there is a state of tension between them.

46. While collective negotiations within an international organization usually take place at the seat of the organization, a specific organ having competence in the area of peaceful settlement of disputes may choose to meet at a venue away from the seat of the organization. Reference is made in this connection to Article 28,

---

8/ I.C.J. Reports 1962, p. 346.

paragraph 3, of the Charter of the United Nations which reads as follows: "The Security Council may hold meetings at such places other than the seat of the Organization as in its judgement will best facilitate its work."

(c) Degree of publicity of the proceedings

47. In the case of bilateral negotiations it is for the parties to determine jointly the degree of publicity they wish to give to their negotiations. They may opt for confidentiality, at least in the initial phase.

48. On occasion, as has been seen above, bilateral negotiations have been encouraged by international organizations. They may in such cases receive a certain degree of publicity. The General Assembly, for example, has sometimes recorded the fact that negotiations were taking place between the two parties concerned, further to an invitation which it had addressed to them to that effect. It has also, in more frequent cases, coupled its invitation to the parties to negotiate with an invitation to report to it on the course of the negotiations. There is an instance where a similar invitation contained in a General Assembly resolution resulted in the issuance by the two parties of a joint statement in the form of an exchange of notes recording the conclusions of the negotiating delegations as to measures to be adopted on the understanding that they might contribute to the process of a definitive solution to the dispute between the two Governments.

49. Negotiations within an organ of an international organization are, at least partly, carried on in public and recorded in official documents. But a growing amount of such "collective negotiations" is conducted privately and informally.

(d) Duration of the negotiation process

50. The time-frame for the negotiation process varies according to the circumstances. The process may be concluded in a few days or may extend over several decades. Practice offers many examples of intermittently conducted negotiations.

51. Under certain treaties a time-limit is set for the completion of the negotiation process, beyond which resort may be had to another means of peaceful settlement. Thus, article 14 of the 1981 Treaty establishing the Organization of Eastern Caribbean States reads in part as follows:

> "1. Any dispute that may arise between two or more of the Member States regarding the interpretation and application of this Treaty shall, upon the request of any of them, be amicably resolved by direct agreement.
>
> "2. If the dispute is not resolved within three months of the date on which the request referred to in the preceding paragraph has been made, any party to the dispute may submit it to the conciliation procedure provided for in Annex A ..." (emphasis added).

Articles 84 and 85, paragraph 1, of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character read in part as follows:

"Article 84

"Consultations

> "If a dispute between two or more States Parties arises out of the application or interpretation of the present Convention, consultations between them shall be held upon the request of any of them ..."

"Article 85

"Conciliation

> "1. If the dispute is not disposed of as a result of the consultations referred to in article 84 *within one month* from the date of their inception, any State participating in the consultations may bring the dispute before a conciliation commission ..." (emphasis added)

Articles 41 and 42 of the 1978 Vienna Convention on Succession of States in respect of Treaties read as follows:

"Article 41. Consultation and negotiation

> "If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

"Article 42. Conciliation

> "If the dispute is not resolved *within six months* of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention ..." (emphasis added)

Article 16, paragraph 1 of the 1965 Convention on the Transit Trade of Land-locked States reads in part as follows:

> "1. Any dispute which may arise with respect to the interpretation or application of the provisions of this Convention which is not settled by negotiation or by other peaceful means of settlement *within a period of nine months* shall, at the request of either party, be settled by arbitration." (emphasis added)

(e) Attitude of the parties

52. Under some treaties, States are under an explicit obligation to take a positive attitude in conducting consultations aimed at settling disputes arising from the interpretation or application of the treaty. Thus under article XXII of the 1947 General Agreement on Tariffs and Trade:

> "Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other contracting party with respect to all matters affecting the operation of this Agreement."

Article 57 of the 1983 International Coffee Agreement contains a similar provision.

53. Mention should further be made in this context of the treaty provisions referred to in paragraph 51 above, which place on parties an obligation of diligence in the initiation and conduct of the negotiation or consultation process.

54. The concerns reflected in the two preceding paragraphs have also found expression in the Manila Declaration, which provides in its section I, paragraph 10, that when States choose to resort to direct negotiations, they should "negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties". This provision reiterates in the specific context of negotiation the general idea enunciated in section I, paragraph 5, of the Declaration, under which "States shall seek in good faith and in a spirit of cooperation an early and equitable settlement of their international disputes by the following means ..."

55. Resolutions of organs of international organizations calling upon States parties to a dispute to enter into negotiations have, on occasion, stressed the need for a positive attitude on the part of all concerned. Thus, in one resolution the General Assembly expressed confidence in the good faith and willingness of the two Governments to pursue vigorously direct negotiations for an early delineation of the frontier. The Security Council in one resolution requested the Secretary-General to enter into immediate consultations with the parties concerned and interested and appealed to them to exercise restraint and moderation and to enable the mission of the Secretary-General to be undertaken in satisfactory conditions. In another resolution, the Security Council regretted a unilateral decision as, *inter alia* tending to compromise the continuation of negotiations and called upon all the parties concerned to refrain from any action which might jeopardize the negotiations, and to take steps which would facilitate the creation of the climate necessary for the success of those negotiations. In other resolutions, the Council urged that negotiations be resumed as soon as possible meaningfully and constructively, on the basis of comprehensive and concrete proposals, and that talks be pursued in a continuing, sustained and result-oriented manner, avoiding any delay.

56. Also relevant in this context is the following extract from the judgment of ICJ in the *South West Africa Cases (Preliminary Objections)*:

> "... it is not so much the form of negotiation that matters as the attitude and views of the Parties on the substantive issues of the question involved. So long as both sides remain adamant ... there is no reason to think that the dispute can be settled by further negotiations between the Parties." 9/

9/ *I.C.J. Reports 1962*, p. 346.

57. Similarly, the Court in its judgment in the North Sea Continental Shelf case stated:

> "The Parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation of a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it". 10/ (emphasis added)

58. Mention should also be made in this context of the judgment of the Court in the Fisheries Jurisdiction case, 11/ in which the Court directed the parties "to conduct their negotiations on the basis that each must in good faith pay reasonable regard to the legal rights of the other", and of the award of 16 November 1957 in the Lake Lanoux case, in which the arbitral tribunal mentions as examples of "infringement of the rules of good faith" in the conduct of negotiations, "unjustified breaking off of conversations, unusual delays, disregard of established procedures, systematic refusal to give consideration to proposals or adverse interests". 12/

(f) Steps aimed at facilitating the negotiating process through the involvement of a third party 13/

59. The dividing line between, on the one hand, steps aimed at facilitating the negotiating process through third party involvement and, on the other hand, mediation or good offices may be difficult to draw. However, since such steps are intrinsically linked to the negotiating process itself, it is appropriate to deal with them briefly in the context of the present section of the handbook.

60. Some treaties contain certain provisions aimed at facilitating the opening of consultations or the conduct of the process. Thus, under article 15, paragraph 3, of the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies:

> "If difficulties arise in connection with the opening of consultations or if consultations do not lead to a mutually acceptable settlement, any State Party may seek the assistance of the Secretary-General without seeking the consent of any other State Party concerned, in order to resolve the controversy."

10/ I.C.J. Reports 1969, p. 47, para. 85 (a).

11/ I.C.J. Reports 1974, p. 33, para. 78.

12/ See Yearbook of the International Law Commission, 1974, vol. II (Part Two) (United Nations publication, Sales No. E.75.V.7 (Part II)), document A/5409, para. 1065.

13/ Steps aimed at facilitating the negotiating process may be taken jointly by the parties without any third party being involved. One such step is the establishment of standing joint commissions with negotiating powers, which is dealt with under subsection 3 (a) above.

The 1983 International Coffee Agreement provides in its article 57 that in the course of the consultation process, on request by either party and with the consent of the other, an independent panel shall be established which shall use its good offices with a view to conciliating the parties.

61. Within international organizations, a decision or a recommendation of a competent organ that parties to a dispute should undertake negotiations with a view to the settlement of their dispute may seek to facilitate the negotiating process by various means.

62. Within the United Nations, the General Assembly has, in one instance, recommended that the negotiating process be assisted, on the request of either party, by a third party to be selected by the parties or, failing their agreement, to be appointed by the Secretary-General. In another instance, the Assembly suggested that the parties concerned should designate a Government agency or person to facilitate contacts between them and assist them in settling the dispute and further decided that if, within six months, the parties had not reached agreement on the designation of such a Government agency or person, the Secretary-General would designate a person for this purpose. 14/ In still another case, the Assembly requested the Secretary-General to undertake a mission of good offices in order to assist the parties to resume negotiations in order to find as soon as possible a peaceful solution of their dispute.

63. The Security Council has also, in some of the cases where it called upon States to carry on negotiations, sought to facilitate the negotiation process by placing the services of a third party at the disposal of the parties. Thus, in one instance, the Council called upon the parties to seek such agreement forthwith by negotiations conducted either directly or through a Mediator. In another case, it urged the Governments concerned to enter into immediate negotiations under the auspices of a United Nations representative. In still another case, it invited the Secretary-General to lend whatever assistance might be requested by both countries in connection with *inter alia* an early resumption of conversations with a view to a comprehensive settlement of all bilateral issues. On yet another occasion the Council requested the Secretary-General to enter into immediate consultations with the parties concerned and interested. In a further case the Council, considering that new efforts should be undertaken to assist the resumption of negotiations, requested the Secretary-General to undertake a new mission of good offices and to that end to place himself personally at their disposal, so that the resumption, the intensification and the progress of comprehensive negotiations, carried out in a reciprocal spirit of understanding and of moderation under his personal auspices and with his direction as appropriate, might thereby be facilitated.

14/ At a prior stage of the same dispute, the General Assembly, having first recommended the establishment of a three-member commission for the purpose of assisting the parties in carrying through appropriate negotiations, established a United Nations Good Offices Commission, consisting of three members to be nominated by the President of the Assembly, with a view to arranging and assisting the negotiations, and requested the Secretary-General, in the event that the members of the Commission were not nominated, to lend his assistance to the Governments concerned.

64. The steps which the organs of the United Nations or other international organizations may take with a view to facilitating the negotiating process are dealt with in detail in the relevant sections of the present chapter (in particular those relating to mediation and good offices) and are recapitulated, as far as the United Nations is concerned, in chapter III and, as regards other international organizations, in chapter IV.

(g) Question whether the existence of an ongoing negotiation process precludes resort to another peaceful settlement procedure

65. This question has been dealt with, as far as judicial settlement is concerned, by the International Court of Justice in a case which involved the alleged violation by one of the parties to the dispute of its international legal obligations to the other party as provided by, *inter alia*, the 1961 Vienna Convention on Diplomatic Relations. 15/ As has been seen above, disputes arising from the interpretation or application of this Convention lie, under the relevant Optional Protocol to the Convention, within the compulsory jurisdiction of the International Court of Justice. Both parties to the dispute had acceded to the Protocol and were therefore bound by it. The Court examined the question whether efforts aimed at easing the situation of crisis existing between the two countries, which had been undertaken by the Secretary-General at the request of the Security Council, could be considered as incompatible with the continuance of parallel proceedings before the Court. The Court came to a negative conclusion and further stated the following:

> "Negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement are enumerated together in Article 33 of the Charter as means for the peaceful settlement of disputes. As was pointed out in the *Aegean Sea Continental Shelf* case, 16/ the jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement by the Court have been pursued *pari passu*." 17/

15/ *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3.

16/ In this case, the Court declared itself unable to share the view that it ought not to proceed with the case while the parties continued to negotiate and that the existence of active negotiations in progress constituted an impediment to the Court's exercise of jurisdiction. The Court further stated:

> "Negotiation and judicial settlement are enumerated together with Article 33 of the Charter of the United Nations as means for the peaceful settlement of disputes. The jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement have been pursued *pari passu*. Several cases, the most recent one being that concerning the *Trial of Pakistani Prisoners of War* (*I.C.J. Reports 1973*, p. 347), show that judicial proceedings may be discontinued when such negotiations result in the settlement of the dispute. Consequently, the fact that negotiations are being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function." *I.C.J. Reports 1978*, p. 12, para. 29.

17/ *I.C.J. Reports 1980*, p. 24, para. 43.

66. In another case, the International Court of Justice has stated:

> "... the Court considers that even the existence of active negotiations in which both parties might be involved should not prevent both the Security Council and the Court from exercising their separate functions under the Charter and the Statute of the Court." 18/

67. In connection with the reference to the Security Council in the above statement of the Court, it should be recalled that the Council is empowered, under Article 36 of the Charter of the United Nations, to recommend appropriate procedures or methods of adjustment "at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature", i.e., any dispute or situation the continuance of which is likely to endanger the maintenance of international peace and security. Under paragraph 2 of the same provision, however, "the Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties". In the latter connection, reference is made to a resolution of the Security Council in which the Council specified that it was acting without prejudice to negotiations that the parties concerned and interested might undertake under Article 33 of the Charter.

4. Outcome of the negotiations and possible subsequent steps

68. When negotiations are successful, they normally lead to the issuance by the parties of an instrument reflecting the terms of the agreement arrived at. This document may be a comprehensive agreement. It may be a joint statement or communiqué. A memorandum or declaration defining broad points of agreement may precede the issuance of a more detailed agreement.

69. If the negotiations are unsuccessful, the parties may choose to adjourn the negotiation process *sine die* or to issue a communiqué recording the failure of the negotiations. If the dispute relates to the interpretation or application of a treaty, the failure of the negotiations may result in denunciation of the treaty by one of the parties.

70. As has been seen above, the dispute settlement clauses of many multilateral treaties provide that disputes which cannot be settled by negotiation shall be submitted to another peaceful settlement procedure. Various patterns of successive steps can be found in practice, as further discussed in detail in the handbook, including the following:

(a) Consultation; conciliation (arts. 84 and 85 of the 1975 Convention on the Representation of States in Their Relations with International Organizations of a Universal Character);

(b) Consultation; other peaceful means of the parties' choice (art. 15 of the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies);

18/ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States)*, *I.C.J. Reports 1984*, p. 440, para. 106.

(c) Negotiation; other peaceful means of the parties' choice; conciliation; arbitration (art. VIII of the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties);

(d) Exchanges of views; peaceful means of the parties' choice; conciliation; judicial or arbitral settlement (arts. 280, 283, 284, 286 and 287 of the 1982 United Nations Convention on the Law of the Sea. Under article 287 of the Convention, a State is free to choose, by means of a written declaration, one or more of four compulsory procedures entailing binding decisions);

(e) Negotiation; procedures provided by the treaty; resort to ICJ (art. 22 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination);

(f) Consultation and negotiation; conciliation; arbitration or resort to ICJ (arts. 41, 42 and 43 of the 1978 Vienna Convention on Succession of States in Respect of Treaties and arts. 42, 43 and 44 of the 1983 Vienna Convention on Succession of States in respect of State property, archives and debts);

(g) Consultation; negotiation; resort to an organ of an international organization (art. 58 of the 1983 International Coffee Agreement);

(h) Negotiation; arbitration, failing agreement on another form of settlement (art. 10 of the 1973 International Convention for the Prevention of Pollution from Ships and Protocol II to the Convention and art. 16 of the 1965 Convention on the Transit Trade of Land-locked States);

(i) Negotiation; arbitration; resort to ICJ (art. 24 of the 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft; art. 29 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women; art. 30 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; art. 13 of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; art. 16 of the 1979 International Convention against the Taking of Hostages; art. 12 of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft; and art. 14 of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation);

(j) Negotiation; procedures provided by the treaty; resort to ICJ (arts. 28 to 44 of the 1966 International Covenant on Civil and Political Rights);

(k) Negotiation; resort to ICJ, failing agreement on another form of settlement (art. XV of the 1971 Universal Copyright Convention; art. 8 of the 1962 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages; art. XII of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid; art. I of the 1957 Convention on the Nationality of Married Women; art. V of the 1953 Convention on the International Right of Correction; art. 10 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; art. IX of the 1953 Convention on the Political Rights of Women; sect. 30 of the 1946 Convention on the Privileges and Immunities of the United Nations; sect. 32 of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies; and art. 34 of the 1959 Agreement on the Privileges and Immunities of the International Atomic Energy Agency).

71. Underlying these clauses is the general principle reflected in section I, paragraph 7, of the Manila Declaration, which reads in part as follows:

> "In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully."

72. The same principle underlies several resolutions of the General Assembly which envisage possible alternative courses of action in case negotiations do not lead to the settlement of the dispute. Thus, in one instance, the General Assembly has recommended a three-step procedure: namely, negotiations, followed by resort, in order to resolve differences arising in the course of negotiations, to a procedure of mediation by a United Nations mediator to be appointed by the Secretary-General and, finally, resort to arbitration in the event of the inability of the parties to accept the recommendations of the mediator. In another instance, the Assembly has recommended that, in the event that negotiations do not lead to satisfactory results within a reasonable period of time, both parties should give favourable consideration to the possibility of seeking a solution of their differences by any of the means provided in the Charter, including recourse to ICJ or any other peaceful means of their own choice.

73. The concept of failure of negotiations has been touched upon both by the Permanent Court of International Justice and by the International Court of Justice. In its judgment in the *Mavrommatis* case, the Permanent Court stated:

> "... the question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations do not of necessity always presuppose a more or less lengthy series of notes and dispatches; it may suffice that a discussion should have been commenced, and this discussion may have been very short; this will be the case if a deadlock is reached, or if finally a point is reached at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that the dispute cannot be settled by diplomatic negotiation." 19/

In its judgment in the *South West Africa Cases (Preliminary Objections)*, the International Court of Justice dealt with the matter in the following words:

> "Now in the present cases, it is evident that a deadlock on the issues of the dispute was reached and has remained since, and that no modification of the respective contentions has taken place since the discussions and negotiations in the United Nations. It is equally evident that 'there can be no doubt', in the words of the Permanent Court, 'that the dispute cannot be settled by diplomatic negotiation', and that it would be 'superfluous' to undertake renewed discussions.
>
> "... So long as both sides remain adamant, and this is obvious even from their oral presentations before the Court, there is no reason to think that the dispute can be settled by further negotiations between the Parties." 20/

19/ *P.C.I.J.*, Series A, No. 2, p. 13.

20/ *I.C.J. Reports 1962*, p. 346.

B. Inquiry

1. Functions and relation to other peaceful means under the Charter of the United Nations

74. In an international dispute involving in particular a difference of opinion on points of fact, the States concerned may agree to initiate an inquiry to investigate a disputed issue of fact, as well as other aspects of the dispute, to determine any violations of relevant treaties or other international commitments alleged by the parties and to suggest appropriate remedies and adjustments. Inquiry may also be resorted to when parties to a dispute agree on some other means of settlement (arbitration, conciliation, regional arrangements, etc.) and there arises a need for collecting all necessary information in order to ascertain or elucidate the facts giving rise to the dispute.

75. The function of inquiry - investigation or elucidation of a disputed issue of fact - was comprehensively dealt with in the 1899 and 1907 Hague Conventions 21/ for the Pacific Settlement of International Disputes. Article 9 of the 1907 Convention reads as follows:

> "In disputes of an international nature involving neither honour nor essential interests, and arising from a difference of opinion on points of fact, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation."

76. Inquiry as a means of settlement of disputes has been provided for in a number of bilateral and multilateral treaties, including the Covenant of the League of Nations, the Charter of the United Nations and the constituent instruments of certain specialized agencies and other international organizations within the United Nations system, and in various instruments by the regional bodies.

77. Inquiry, as an impartial third-party procedure for fact-finding and investigation, may indeed contribute to a reduction of tension and the prevention of an international dispute, as distinct from facilitating the settlement of such a dispute. The possibility of fact-finding (inquiry) contributing to the prevention of an international dispute was recognized, for example, by the General Assembly in its resolution 1967 (XVIII) of 16 December 1963 on the "Question of methods of

---

21/ Carnegie Endowment for International Peace, The Proceedings of the Hague Peace Conferences; Translation of the Official Texts, James Brown Scott, ed. The Conference of 1899 (New York, Oxford University Press, 1920), p. 237; and ibid., The Conference of 1907, vol. I. Plenary Meetings of the Conference (New York, Oxford University Press, 1920), p. 599.

fact-finding." 22/ In the resolution, the Assembly stated its belief "that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multinational conventions".

78. On 18 December 1967, the General Assembly adopted resolution 2329 (XXII), in which it requested the Secretary-General to prepare a register of experts in legal and other fields, whose services the States parties to a dispute might, by agreement, use for fact-finding in relation to a dispute. It also requested Member States to nominate up to five of their nationals to be included in such a register. 23/ As mentioned in paragraph 144 of the first report of the Secretary-General (A/5094), the role of such fact-finding bodies "as a stabilizing factor in themselves, in situations potentially endangering the maintenance of international peace and security, should not be overlooked, nor the part which they have on occasions played in providing a means of liaison and communication between conflicting parties".

79. To a great extent the task of such fact-finding bodies established in accordance with the above-mentioned resolution "in relation to a dispute" may be regarded as seeking the prevention of a dispute or the prevention of the aggravation of a dispute and the adjustment of situations the continuance of which is likely to give rise to a dispute.

80. Recognition that fuller use and further improvement of the means for fact-finding of the United Nations could contribute to the strengthening of the role of the Organization in the maintenance of international peace and security and promote the peaceful settlement of disputes as well as the prevention and removal of threats to the peace has developed slowly together with a new willingness on the part of Member States to enhance the role of the United Nations. The 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field called for full use of the fact-finding capabilities of the Security Council, the General Assembly and the Secretary-General in strengthening further the role and effectiveness of the United Nations in maintaining international peace and security for all States. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had developed

---

22/ Under this item, the Secretary-General of the United Nations prepared two studies, the first dated 1 May 1964, and the second, 22 April 1966 (see, respectively, *Official Records of the General Assembly, Twentieth Session, Annexes*, vol. III, agenda items 90 and 94, document A/5694, and ibid., *Twenty-first Session, Annexes*, vol. III, agenda item 87, document A/6228. These studies describe the practice of States and some international organizations, principally the League of Nations and the United Nations, specialized agencies and other international organizations of universal or regional character, indicating the evolution of the procedure.

23/ The Secretary-General issued the Register on 24 September 1968 (document A/7240); subsequent revisions appeared on 7 November 1969 (A/7751) and on 18 November 1970 (A/8108). The Register contained 189 nominations received from 42 Member States. There have been no further changes in the Register since that time.

further on fact-finding by the United Nations. The Committee completed its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and submitted it to the General Assembly for consideration and adoption. 24/

81. From the evidence in the above-mentioned treaties and other international instruments, it may be observed that the terms "inquiry" ("enquiry"), "fact-finding" and "investigation" have all been used (sometimes interchangeably) for this type of procedure under which parties to an international dispute may call for the establishment of an international commission of inquiry, 25/ an international fact-finding commission, 26/ or an international investigation commission, 27/ with varying degrees of competence. The competence conferred upon a commission of inquiry may vary depending on the subject-matter of the inquiry and also whether the machinery is instituted to serve the interest of States directly, as illustrated by a number of cases, 28/ both prior to and since the Hague Conventions. It may also depend on whether an inquiry is set in motion to assist an international organization, such as the United Nations, to fulfil its various obligations under the Charter in the area of the maintenance of international peace

---

24/ See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 33* (A/46/33), para. 19.

25/ See, e.g., article 9 of both the 1899 and 1907 Hague Conventions (*supra*, note 21).

26/ See, e.g., article 90 of Additional Protocol I of 1977 to the 1949 Geneva Conventions for the Protection of War Victims, United Nations, *Treaty Series*, vol. 1125, p. 3.

27/ See, e.g., the United Nations commission of investigation described in the two studies of the Secretary-General (*supra*, note 22).

28/ See, e.g., the inquiry commissions in: the *Maine* case, *Annual Register* (1898), p. 362; *The North Sea or Dogger Bank Case (Great Britain vs. Russia)*, Carnegie Endowment for International Peace, *The Hague Court Reports*, James Brown Scott, ed., First Series (New York, Oxford University Press, 1916), p. 403; the *Tavignano* case, ibid., p. 413; the *Tiger* case, N. Bar-Yaacov, *The Handling of International Disputes by Means of Inquiry* (London and New York, Oxford University Press, 1974), p. 156 (documents concerning the case were never published; they are held in the Library of the Permanent Court of Arbitration at The Hague); the *Tubantia* case (Netherlands vs. Germany), Carnegie Endowment for International Peace, *The Hague Court Reports*, James Brown Scott, ed. (New York, Oxford University Press, 1932), p. 135; the *Red Crusader* case (United Kingdom and Denmark: Exchange of notes constituting an agreement establishing a Commission of Enquiry ..., London, 15 November 1961), United Nations, *Treaty Series*, vol. 420, p. 67; and E. Lauterpacht, *The Contemporary Practice of the United Kingdom in the Field of International Law* (London, British Institute of International and Comparative Law, 1962), p. 50.

and security 29/ or whether an inquiry commission is instituted by any of the specialized agencies and the International Atomic Energy Agency to deal with an issue under their respective constitutions and statutes. 30/

82. By virtue of its mandate to investigate the facts and to clarify the questions in dispute under the functions outlined above, inquiry may thus involve the hearing of the parties, the examination of witnesses or visits on the spot. 31/ Although inquiry may thus employ the techniques of gathering evidence which are normally used in the arbitral or judicial process, this does not change its basic status and functions as outlined above. But it does underscore the fact that inquiry is thus capable of combining the benefits of diplomacy and legal techniques to obtain for the parties an impartial report on the issues in dispute, or of suggesting a solution of the problem. Because of this possibility of being given the mandate of recommending a solution, a commission of inquiry may thus tend to acquire a status which sometimes makes it difficult to distinguish its function from that of conciliation. This has resulted in the establishment of a machinery designated as a panel for inquiry and conciliation in the context of the United Nations. 32/

29/ By its resolution 496 (1981) of 15 December 1981, the Security Council decided to send a commission of inquiry composed of three of its members in order to investigate the origin, background and financing of the mercenary aggression of 25 November 1981 against the Republic of Seychelles, as well as assess and evaluate economic damages, and to report to the Council with recommendations; and by its resolution 598 (1987) of 20 July 1987 requested the Secretary-General "to explore, in consultation with Iran and Iraq", the question of entrusting an impartial body with inquiring into responsibility for the conflict and to report to the Security Council as soon as possible. In one recent instance, the General Assembly requested the Secretary-General to carry out promptly investigations in response to reports that might be brought to his attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons in order to ascertain the facts of the matter and to report promptly the result of any such investigation to all Member States (resolution 44/115 B of 15 December 1989).

30/ In the incidents of the shooting down of civilian aircraft the Council of the International Civil Aviation Organization (ICAO), by its resolution of 16 September 1983 in one case, directed the Secretary-General of ICAO "to institute an investigation to determine the facts and technical aspects relating to the flight and destruction of the aircraft". Similarly, in another case, in the statement by the President of the Council of the International Civil Aviation Organization, approved by the Council on 14 July 1988, the Council directed the Secretary-General of ICAO "to institute an immediate fact-finding investigation to determine all relevant facts and technical aspects of the chain of events relating to the flight and destruction of the aircraft".

31/ See, e.g., articles 9 to 36 of the 1907 Hague Convention, which contain a more elaborate description of investigation procedure than those of the 1899 Convention.

32/ The creation of a Panel for Inquiry and Conciliation was provided for in General Assembly resolution 268 D (III) of 28 April 1949. The list of persons designated by 15 Member States is contained in a note by the Secretary-General dated 20 January 1961 (A/4686-S/4632). The Panel has never been used.

2. Initiation and methods of work

83. Inquiry may be set in motion by mutual consent of the States concerned on an ad hoc basis, relying upon a treaty in force between them, creating a general obligation to settle disputes by peaceful means. It may also be initiated in accordance with the terms of an applicable treaty, specifically establishing inquiry as the mode of handling a category of disputes and indicating how the process may be initiated, including its method of work. 33/

84. Some treaties have thus provided for the establishment of a permanent commission of inquiry, fact-finding or investigation, whose jurisdiction is to be accepted in advance by the States parties to the treaty in question. 34/ The jurisdiction of such institutionalized commission of inquiry either may be invoked without further agreement between States parties to a dispute, or may be made subject to a special agreement between the parties to a dispute. A treaty may also indicate the conditions under which the jurisdiction of the established commission may be invoked by one party unilaterally 35/ and those under which the jurisdiction may only be invoked by mutual consent. 36/ A provision may also be made in a treaty requiring that parties, invoking the jurisdiction of the commission, draw up a protocol in which they state the question or questions which they desire the commission to elucidate. Alternatively, in another treaty, the commission of inquiry may itself define the facts to be examined.

85. The methods of work of a commission of inquiry are those aimed at enabling the commission, in accordance with the competence conferred upon it, to acquire all necessary facts in order to become fully informed of the issues giving rise to a dispute. Thus, as mentioned in paragraph 82 above, a commission of inquiry may hear the parties to a dispute, examine witnesses and experts, carry out investigations on the spot with consent of the parties and receive and review documentary evidence. The parties are, both in practice and under the relevant treaties, entitled to be represented during the proceedings by agents and counsel. Such is the case, for example, within commissions of inquiry instituted under article 26 of the Constitution of the International Labour Organisation (ILO). Similarly, under article 14 of the 1907 Hague Convention, the parties are entitled to appoint special agents to attend the commission of inquiry, whose duty is to

---

33/ See, e.g., article 9 of both the Hague Conventions.

34/ See, e.g., the so-called Bryan treaties which the United States entered into with a number of European and Central and South American States commencing in 1913. As to details concerning these treaties see the report of the Secretary-General on methods of fact-finding, A/5694, paras. 62-78; the Treaty to Avoid or Prevent Conflicts between the American States ("Gondra Treaty"), signed at Santiago on 3 May 1923, the League of Nations Treaty Series, vol. XXXIII, p. 25, and American Treaty on Pacific Settlement (Pact of Bogotá), signed at Bogotá on 30 April 1948, United Nations, Treaty Series, vol. 30, p. 55.

35/ See, e.g., the Pact of Bogotá, note 34, *supra*.

36/ One of the so-called Bryan treaties, i.e., the Treaty between the United States of America and the United Kingdom of Great Britain of 15 September 1914 (see A/5694) (*supra*, note 22), para. 62, note 26.

represent them and to act as intermediaries between them and the commission. They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the commission. Under article 21 of the Convention, "every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned". Whether or not the commission is to hold such hearings in public is also another question. In this connection, it may be noted that article 31 of the 1907 Hague Convention stipulated that "the sittings of the commission [of inquiry] are not public, nor the minutes and documents connected with the inquiry published, except in virtue of a decision of the commission taken with the consent of the parties".

86. The extent to which these techniques of acquiring evidence may be used by a commission of inquiry will depend upon the function assigned to it: whether merely to elucidate the facts in dispute and to submit a written report thereon for further use of the parties to a dispute, or to prepare a report in which it also recommends a solution to the dispute. In both instances, a written report is to be prepared and submitted by the commission either to the States parties to the dispute or to the organ of the international organization which initiated it.

3. Composition and other institutional aspects

87. Although reference has been made in the preceding paragraphs to inquiry mainly in the form of various commissions to be composed of a specified number of individuals, thus constituting a third-party procedure, there are certain important exceptions to that view which may now be pointed out in connection with the institutional aspects of the procedure.

88. First, it should be noted that an inquiry must not necessarily be conducted by a group of people constituting a commission or a panel. An inquiry may indeed be undertaken by one person alone. Thus the States concerned may agree to approach, for example, the Secretary-General of the United Nations or the chief administrative officer of any of the specialized agencies or of bodies within the United Nations system to appoint a special representative or a mission to carry out an inquiry on the difficulties which have arisen between such States or to investigate the events giving rise to a complaint by one State against another, with the view to bringing about an amicable solution. 37/ Both the General Assembly and the Security Council are equally free to ask the Secretary-General of the United Nations to appoint a special representative to undertake an inquiry in connection with issues falling under their responsibilities and competence and have done so on several occasions. 38/

37/ The Secretary-General announced on 21 July 1988 that he was sending a mission to Iran and Iraq to investigate the situation of prisoners of war at the request of these States (see document S/20147).

38/ See, e.g., Security Council resolution 384 (1975) of 22 December 1975 on the situation in Timor and the statement of the President of the Security Council of 28 February 1974 in connection with the complaint by Iraq.

89. Secondly, it should be observed that an inquiry need not always be in the nature of a third-party procedure (the appointment of either a commission or an individual to undertake an independent investigation on behalf of the parties to the dispute). In some cases, especially those involving frontier disputes, provisions have been made for an inquiry to be conducted directly between the local frontier officials of the States parties to such a dispute without involving a third party. This practice of eliminating the third-party element in an inquiry procedure exists in a number of bilateral treaties. 39/

90. As for the third-party inquiry procedures, there are a number of questions concerning their institutional aspects, which are similar to those to be discussed in relation to the other ad hoc procedures such as conciliation commissions or arbitral tribunals. The questions include: the size of the inquiry commission; whether the commissioners are to be selected from a pre-constituted list, such as a register of experts; 40/ whether to specify a particular qualification (professional competence) for the individuals to be appointed to the inquiry commission; the procedures for appointment and for filling the vacancies that may occur in the commission; the rules of procedure to be applied by the commission taking into account its method of work discussed in the preceding paragraphs; the secretariat or seat of an inquiry commission; and the financial arrangements for covering the expenses relating to the procedure.

91. Without going into the details concerning each of the institutional questions raised above, the following examples may be noted with respect to the question of *composition*. The 1907 Hague Convention, for example, provides that, failing the direct agreement of the parties on the composition of the commission of inquiry in the manner established under the treaty, each party to the dispute appoints two members and the four members thus designated - or, failing agreement, a third State jointly agreed upon - select the fifth. Under Additional Protocol I to the 1949 Geneva Conventions, the States parties to the Protocol elect, from a list of persons to which each of them may nominate one person, the 15 members of the International Fact-Finding Commission; as to the seven-member Chamber to be set up - unless otherwise agreed by the Parties concerned - in case an inquiry is requested, it consists of five members appointed by the President of the Commission after consultations with the Parties and of two ad hoc members to be appointed by each side. Under the 1982 United Nations Convention on the Law of the Sea, there is a special third-party procedure constituted in accordance with article 3 of annex VIII thereto, which may be requested to carry out an inquiry and establish the facts giving rise to the dispute, and which consists of five members of which each party selects two, the fifth member being appointed by agreement by the parties to the dispute, preferably from a pre-constituted list of experts established under the Convention. While various such models exist, account should also be taken of the inquiry commissions appointed by a single authority, such as the Secretary-General of the United Nations, 41/ or by the various organs of the

---

39/ For such agreements, see, e.g., United Nations, *A Survey of Treaty Provisions for the Pacific Settlement of Disputes 1949-1962* (1966), pp. 788-866.

40/ See, e.g., the register of a Panel for Inquiry and Conciliation called for in General Assembly resolution 268 D (III), *supra*, note 32.

41/ See, e.g., Security Council resolution 568 (1985) of 21 June 1985, in connection with the complaint by Botswana.

United Nations, 42/ as well as the commission of inquiry under article 26 of the ILO Constitution, which is to be appointed by the Governing Council on the proposal of the Director General.

92. As to the question of rules of procedure, it may be observed generally that commissions have enjoyed varying degrees of freedom in settling the details of such procedures. In one instance, the commission was instructed to "determine its own procedure and all questions affecting the conduct of the investigation", subject to the provisions of the agreement which instituted it. 43/ In another instance, the provisions of the Hague Conventions were made applicable to the commissions with respect to all points not specifically covered by the agreement on the setting up of the inquiry commission. 44/ In still another instance, an agreement on the inquiry regulated in detail the procedures to be applied by the commission and provided that the rules contained in the 1907 Hague Convention would be applicable in so far as they were not at variance with the provisions of the inquiry convention. 45/ A mission of inquiry dispatched by the Secretary-General of the United Nations would determine its procedures and methods of work.

93. With respect to the seat of inquiry, the following may be noted. Under the 1907 Hague Convention, it is for the parties to determine where the commission is to sit and whether it may be free to sit at another place. If the agreement to establish an inquiry pursuant to the Convention is silent on the matter, the inquiry commission would automatically sit at The Hague. The place of meeting, once fixed, cannot be altered by the commission except with the assent of the parties. According to other agreements for inquiry, the capital city of a third State as the place of the meeting of the commission was provided for 46/ or it was left open for the commission to determine the country wherein it would sit, taking into consideration the greater facilities for the investigation. 47/

94. When the inquiry, investigation or fact-finding process is conducted under the auspices of an international organization, the competent body will usually assemble at the headquarters or at one of the regional offices of the organization concerned, unless an on-the-spot investigation is necessary with the consent of the parties.

42/ See, e.g., Security Council resolutions 404 (1977) of 8 February 1977, in connection with the complaint by Benin, and 571 (1985) of 20 September 1985, in connection with the complaint by Angola against South Africa.

43/ See subparagraph c (i) of the Exchange of notes constituting an Agreement in the Red Crusader case (supra, note 28).

44/ See, e.g., article 8 of the Agreement for inquiry in the Tavignano case, supra, note 28.

45/ See, e.g., article 8 of the Agreement for inquiry in the Tubantia case, supra, note 28.

46/ See, e.g., article 5 of the Agreement for inquiry in the Dogger Bank case, supra, note 28.

47/ See, e.g., subparagraph f (i) of the Exchange of notes constituting an Agreement in the Red Crusader case, supra, note 28.

95. The 1907 Hague Convention provides in its article 15 that "the International Bureau of the Permanent Court of Arbitration acts as registry for the commissions which sit at The Hague, and shall place its offices and staff at the disposal of the contracting Powers for the use of the commission of inquiry". It furthermore provides in its article 16 that if the commission meets elsewhere than at The Hague, it appoints a secretary general, whose office serves as registry. Under Additional Protocol I to the 1949 Geneva Conventions, the depositary (i.e., the Swiss Government) "shall make available to the Commission the necessary administrative facilities for the performance of its functions" (art. 90, para. 1 (f)).

96. As to groups appointed by the chief administrative officer of an international organization (such as the Secretary-General of the United Nations) or an organ of an international organization (such as the Governing Body of ILO), they will normally receive the required secretariat support from the organization itself.

97. As to the question of qualification, it is generally understood that the individuals to be appointed to a commission of inquiry should be specialists in the matters likely to come up in the investigation in question. Whether or not the investigation of a legal question has specifically been referred to the commission, it has proved useful to include legal experts apart from those knowledgeable in the specific subject of inquiry. It is very much up to the parties, in the final analysis, to appoint individuals possessing the qualifications necessary and relevant for each case. 48/

98. With regard to financial arrangements, it may be noted that, under the relevant treaties and in practice, equal sharing of the expenses is usually the rule. Thus under the 1907 Hague Convention, each party pays its own expenses and an equal share of the expenses incurred by the commission. Provisions along the same lines are to be found in the 1982 United Nations Convention on the Law of the Sea and in bilateral agreements providing for the establishment of ad hoc commissions of inquiry. In the case of fact-finding or inquiry proceedings conducted under the aegis of an international organization, the costs of secretariat services are usually borne by the organization concerned.

4. Outcome of the process

99. The outcome of an inquiry is a report which is prepared and submitted to the parties or bodies that instituted it. The value of the report would however vary in accordance with the function and competence given to the particular inquiry. Thus, under article 35 of the 1907 Hague Convention establishing an inquiry only for elucidating the facts, the report of the inquiry limits itself to the statement of facts as established and the parties to the dispute retain their complete freedom of action with respect to the dispute. The report is thus non-binding. In

---

48/ Because of the naval character of disputes investigated so far by commissions of inquiry established under the Hague Conventions, they were composed mainly of naval officers of high rank as well as jurists. In the *Tubantia* case the third State was explicitly requested to designate a jurist as chairman of the commission. There were also two jurists, including the Chairman, designated in the *Red Crusader* case.

contrast, paragraph 27, article 5, of annex VIII to the 1982 United Nations Convention on the Law of the Sea recognizes an inquiry procedure whose results (findings of fact), unless the parties otherwise agree, are to be considered conclusive by the parties to the dispute, subject to the special procedure under the article.

100. With respect to the commissions given the competence to make recommendations on the settlement of the dispute, there are also variations of the value of the commission's report. Thus in one of the cases the parties to the dispute agreed in advance to accept the recommendations of the commission as binding. 49/ In another case, the acceptance by the parties of the legal conclusions reached in the commission's report also enabled the inquiry process to play a significant role in the settlement of that dispute. 50/ The Montevideo Agreement of 1915 between Chile and Uruguay, for example, provides in its article IV that "after receiving the report of the Commission the two Governments shall allow a period of six months in order to endeavour to obtain a new settlement of the dispute based on the conclusions of the Commission; and if during this fresh extension the two Governments shall not be able to arrive at a friendly solution, the dispute shall be referred to the Permanent Court of Arbitration at The Hague. 51/ Under article 29 of the ILO Constitution, each party has three months to inform the Director General of ILO whether it accepts the recommendations contained in the report of the commission.

C. Good offices

1. Main characteristics, legal framework and relation to other peaceful means under the Charter of the United Nations

101. When States parties to a dispute are unable to settle it directly between themselves, a third party may offer his good offices as a means of preventing further deterioration of the dispute and as a method of facilitating efforts towards a peaceful settlement of the dispute. Such an offer of good offices, whether upon the initiative of the third party in question or upon the request of one or more parties to the dispute, is subject to acceptance by all the parties to the dispute. In other words, the third party offering good offices, be it a single State or a group of States, an individual or an organ of a universal or regional international organization, must be found acceptable to all the parties to the dispute.

102. The third party exercising good offices normally seeks to encourage the parties to the dispute to resume negotiations, thus providing them with a channel of communication. However, there are cases in which the third party exercising good offices is authorized to do more than merely act as a go-between and is

---

49/ The Tiger case, see note 28, supra.

50/ The Red Crusader case, see note 28, supra.

51/ Treaty between the Republic of Chile and the Republic of Uruguay for the Settlement of Disputes by an International Commission, Montevideo, 27 February 1915, British and Foreign State Papers, vol. CIX (1915), p. 885.

allowed to take active part in the dispute settlement process, by making proposals for its solution and holding meetings with the parties to the dispute to discuss such proposals. In such situations, the third party in question may be considered as not only contributing his good offices but also as undertaking mediation. Accordingly, good offices may be said to share a common characterization with mediation as a method of facilitating a dialogue between parties to an international dispute, aimed, as the case may be, at scaling down hostilities and tensions and designed to bring about an amicable solution of the dispute.

103. In the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes, containing specific provisions establishing good offices as one of the peaceful methods of settlement of disputes, good offices is indeed treated as if it were interchangeable with mediation, 52/ suggesting that the two methods, although explicitly treated as distinct in at least one regional treaty, 53/ are usually seen as performing functions which may sometimes not be distinguishable in practical terms. Good offices was construed in this manner because in a given dispute the role of the third party exercising good offices may change in accordance with the developments of the events relating to the dispute. Such developments, in turn, determine the nature and degree of involvement of such third party in the process of facilitating the efforts towards a peaceful settlement of the dispute, thus making it difficult to say when good offices ended and mediation began.

104. Although Article 33, paragraph 1, of the Charter of the United Nations does not specifically mention good offices among the peaceful means for the settlement of disputes between States, it has been mentioned in recent international instruments. Thus, the 1982 Manila Declaration on the Peaceful Settlement of International Disputes 54/ places good offices on an equal footing with the other peaceful methods enumerated in Article 33, paragraph 1, of the Charter by providing, in its paragraph 5, as follows:

> "States shall seek in good faith and in a spirit of cooperation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute."

Moreover, the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field 55/ also provides, in its paragraph 12, that "the

---

52/ See, e.g., arts. 2-8 on good offices and mediation of the 1899 and 1907 Hague Conventions (*supra*, note 21).

53/ See, e.g., arts. IX to XIV of the American Treaty on Pacific Settlement (Pact of Bogota), *supra*, note 14.

54/ See chap. I, para. 2, above.

55/ General Assembly resolution 43/51 of 5 December 1988, annex.

Security Council should consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence, including observers and peace-keeping operations, as a means of preventing the further deterioration of the dispute or situation in the areas concerned".

2. Functions

105. According to the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes, in which good offices and mediation were treated interchangeably, the methods were assigned the following functions: "In case of serious disagreement or dispute, *before an appeal to arms*, the contracting [signatory] Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers". 56/ The friendly Powers allowed to intervene in the dispute, as further provided in the conventions, "have the right to offer good offices or mediation *even during the course of hostilities*." 57/

106. Under the Pact of Bogotá, where an attempt was made to distinguish good offices from mediation, the following specific provision was made: "The procedure of good offices consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens of any American State which is not a party to the controversy to bring the parties together, so as to make it possible for them to reach an adequate solution between themselves." 58/ The Pact further provided that "once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the State or citizens that have offered their good offices or accepted an invitation to offer them; they may, however, by agreement between the parties, be present at the negotiations. 59/

107. In a statement describing his responsibilities under the Charter, the Secretary-General made the following cogent explanation of the functions of good offices:

> "Furthermore, the Security Council and other organs of the United Nations have entrusted the Secretary-General with various tasks which broadly entail the exercise of good offices. This is a very flexible term as it may mean very little or very much. But, in an age in which negotiations have to replace confrontation, I feel that the Secretary-General's good offices can significantly help in encouraging Member States to bring their disputes to the negotiating table. Negotiations today have a character quite different from what they had in the past. Talleyrand called negotiations '*l'art de laisser les autres suivre votre propre voie*'. That, however, was true of a world

---

56/ Article 2 of both the 1899 and the 1907 Hague Conventions (emphasis added), *supra*, note 21.

57/ Article 3 of both the 1899 and the 1907 Hague Conventions (emphasis added), ibid.

58/ Article IX of the Pact of Bogotá, *supra*, note 34, p. 86.

59/ Article X of the Pact of Bogotá, *supra*, ibid.

which no longer exists. Today, negotiations need to take account of the great political and economic changes in our world. In order to succeed, and if the vital interests of all concerned are taken sufficiently into consideration, no party will consider it a sign of weakness to listen to a cogent argument, and accept a demonstrably reasonable outcome. The parties may retain their different outlooks, but wherever they confront one another, life imposes upon them the obligation to seek all possible points of rapprochement and try to reduce the elements of contention and conflict. The task of the United Nations and the purpose of the good offices of the Secretary-General is to make the discharge of this obligation easier. In view of the complexity of the issues which arise in our dynamic world, traditional diplomacy can no longer suffice. New methods and devices have become important.

"The process involved contributes to the growth of international law, for every resolution of a dispute, every new agreement, adds a new building-stone to the edifice of law. More immediately, it answers the needs of peace-making. It is a very complex task, requiring great discretion. One of my predecessors rightly remarked that, 'while the Secretary-General is working privately with the parties in an attempt to resolve a delicate situation, he is criticized publicly for his inaction or even lack of interest'. In situations of confrontation, the parties to a dispute are extremely sensitive and this makes it important that they should have confidence in the impartiality or the objectivity of the United Nations and its Secretary-General. The only instrument I can use is persuasion. When successful, it is a more powerful weapon than constraint, for it makes the persuaded party an ally of the solution. But to be able to persuade, you must prove the virtues of a solution, demonstrate the need to compromise and convince the party concerned that an agreement today is much more advantageous for it than a doubtful victory tomorrow. It is here that inventiveness is essential. We have to stretch our imagination to discern points of potential agreement even where at first sight they look non-existent. Even more important is patience, the refusal to give up in the face of apparently hopeless odds. Patience is greatly helped by the realization that in so many areas some of the great problems of today reflect the accumulation of violations, mistakes and passivity stretching over long periods. Hence, the difficulty of reconciling different positions, and hence also, its acute urgency.

"As Secretary-General of the United Nations, I am encouraged when States respond positively to the offer of my services. If two parties are unable or unwilling to sit down at the same table, action from some third quarter - such as the United Nations - is indispensable. But, in such a situation, each party must feel that it will not incur a disadvantage by responding to my good offices. And, in making my good offices available, timing is of critical importance." 60/

108. The above statement underscores the fact that the third party offering its good offices must earn and maintain the confidence of the parties to the dispute and that good offices is a method which should be invoked in a timely manner so as to enhance its chances of performing the function of preventing further deterioration of disputes, while at the same time encouraging the parties to the dispute to reach an amicable settlement.

60/ SG/SM/3525, pp. 4 and 5.

109. Good offices may be offered and undertaken: by a single State or a group of States; within the framework of an international organization such as the United Nations, its specialized agencies or other international organizations, both global or regional; or by an individual acting alone, with the advice of an established committee or with the assistance of a special or personal representative.

110. In recent practice, good offices has been undertaken as a joint effort between the United Nations and regional organizations. Apart from the Secretaries General of the Organization of African Unity (OAU) and the Organization of American States (OAS), who have contributed their good offices individually or jointly with the Secretary-General of the United Nations, other prominent individuals such as heads of State in the respective regions have also tendered their good offices to bring about the peaceful settlement of regional disputes.

3. Application of the method

111. In certain cases States have offered their good offices directly in an effort to bring about a settlement of disputes between States before such disputes were referred to international or regional organizations. The few examples include: the United States, which in 1946 exercised its good offices in connection with the territorial dispute between France and Thailand; 61/ Switzerland, which tendered its good offices in connection with the Franco-Algerian conflict in 1960-1962; 62/ the Union of Soviet Socialist Republics, which in 1965 used its good offices in order to assist in the peaceful settlement of the India-Pakistan question connected with the Kashmir problem; 63/ and France, which in the early 1970s exercised its good offices in relation to the Viet Nam conflict. 64/

112. Good offices has been more widely used recently by the United Nations, and has continued to gain prominence as one of the methods by which the prevention and removal of disputes and situations which may threaten international peace and security could be achieved through the Organization. Some of the early occasions in which good offices was used by the United Nations may therefore be mentioned briefly. They include the Indonesia question, 65/ in which the Security Council, in 1947, resolved to tender its good offices to the parties in order to assist in the pacific settlement of their dispute involving hostilities between the armed forces of the Netherlands and Indonesia. In 1956, the good offices of the United Nations (the Secretary-General on behalf of the Security Council) were also used in

---

61/ See Official Records of the Security Council, First Year: Second Series, No. 23, 81st meeting, pp. 505-507.

62/ Recueil des Cours, 1987, vol. I, p. 263.

63/ See Official Records of the General Assembly, Twenty-first Session, Supplement No. 2, part I, chap. III.

64/ Annuaire français de droit international, 1972, vol. XVIII, pp. 995 and 996.

65/ See Official Records of the General Assembly, Third Session, Supplement No. 2 (A/620), part one, chap. 4, sect. D, document S/Res.525.

the Palestine question 66/ to secure compliance with the armistice agreement. In 1958, a good offices mission, constituted by the Security Council and composed of two Member States (the United States and the United Kingdom), assisted in the Tunisian question 67/ towards the settlement of several incidents between France and Tunisia.

113. The question of Cyprus, 68/ of which the Security Council has been seized since 1964 and with respect to which the Secretary-General has been conducting good offices missions, provides a recent example. Other recent examples of United Nations activities involving the use of good offices performed by the Secretary-General or by his special or personal representative include, for example, the good offices offered to deal with the situation in Kampuchea, 69/ and to deal with complaints such as that between the Libyan Arab Jamahiriya and Malta arising from their dispute relating to the delimitation of the continental shelf between them. 70/ The good offices of the Secretary-General have also been tendered to deal with disputes relating to Non-Self-Governing Territories or decolonization, such as those concerning the questions of East Timor, 71/ the Falkland Islands (Malvinas), 72/ Western Sahara, 73/ the Comorian Island of Mayotte, 74/ and also in the efforts to bring about the decolonization of Namibia by attempting to secure the implementation of Security Council resolutions 385 (1976) of 30 January 1976 and 435 (1978) of 29 September 1978 embodying the United Nations plan for the independence of Namibia. 75/ The good offices of the Secretary-General were also called for in the context of the long-standing efforts

---

66/ Repertoire of Practice of the Security Council, Supplement 1956-1958, chap. I, part IV, case 18, pp. 14 and 15; ibid., chap. VIII, part II, pp. 95-98. For the continuing efforts relating to other aspects of the question, see, e.g., General Assembly resolution 43/176 of 15 December 1988.

67/ Ibid., chap. X, case 1, pp. 137 and 138.

68/ See, e.g., S/21932 and S/21981.

69/ See General Assembly resolution 44/22 of 16 November 1989.

70/ See Official Records of the Security Council, Thirty-fifth Year, Supplement for October, November and December 1980, documents S/14228 and S/14256.

71/ See A/45/507.

72/ See General Assembly resolution 43/24 of 17 November 1988.

73/ See General Assembly resolution 45/21 of 20 November 1990.

74/ See General Assembly resolution 45/11 of 1 November 1990.

75/ See General Assembly resolution 42/14 B of 6 November 1987, in paragraph 15 of which the Assembly urged the Security Council to undertake forthwith consultations for the composition and emplacement of the United Nations Transition Assistance Group in Namibia (UNTAG), leading to the process of granting independence to Namibia in 1990.

to achieve the settlement of the Arab-Israeli conflict 76/ and to deal with the situation of armed conflict in Central America. 77/ The Secretary-General has also contributed his good offices in the course of the settlement of a dispute relating to aerial hijacking, i.e., the incident involving Pakistan and Syria, 78/ and in attempting to secure the release of the American diplomatic and consular personnel held hostage in Tehran. 80/

114. The good offices of the Secretary-General were also used in the context of the situation relating to Afghanistan; and were provided for in the agreements regarding the settlement of that question concluded in Geneva on 14 April 1988. Thus, the Agreement on the Interrelationships for the Settlement of the Situation Relating to Afghanistan provides in its paragraph 7 as follows:

> "A representative of the Secretary-General of the United Nations shall lend his good offices to the Parties and in that context he will assist in the organization of the meetings and participate in them. He may submit to the Parties for their consideration and approval suggestions and recommendations for prompt, faithful and complete observance of the provisions of the instruments." 81/

It may also be mentioned that, in its resolution 622 (1988) of 31 October 1988, the Security Council confirmed its agreement to the arrangement for the temporary dispatch to Afghanistan and Pakistan of military officers from existing United Nations operations to assist in the mission of good offices of the Secretary-General, the scope of which is further elaborated in the Memorandum of Understanding annexed to the above-mentioned Interrelationships Agreement.

115. Good offices has also been undertaken as a joint effort between the Secretary-General of the United Nations and the current Chairman of the Organization of African Unity to bring about the settlement of the questions of Western Sahara 82/ and of the Comorian Island of Mayotte. 83/ There have also been similar joint good offices efforts by the Secretary-General of the United Nations and the Secretary-General of OAS to find a peaceful solution of the conflict in Central America. 84/

76/ See, e.g., General Assembly resolution 45/68 of 6 December 1990 on the question of Palestine, relating particularly to the efforts by the United Nations to organize a conference on the matter.

77/ See General Assembly resolutions 44/10 of 23 October 1989 and 45/15 of 20 November 1990.

78/ See SG/SM/3077 and SG/SM/3078, both of 12 March 1981.

80/ See the statement by the President of the Security Council of 9 November 1979 (S/13616) and Security Council resolutions 457 (1979) of 4 December 1979 and 461 (1979) of 31 December 1979.

81/ See S/19835, annex.

82/ *Supra*, note 73.

83/ *Supra*, note 74.

84/ *Supra*, note 77.

4. Institutional and related aspects

(a) Initiation of the procedure

116. Good offices may be set in motion, as described in paragraph 101 above, either upon the initiative of a third party, whose offer has been accepted by the parties to the dispute, or by an invitation by all the parties to the dispute. Thus, the third party tendering good offices cannot impose himself upon the parties to the dispute.

117. It may be resorted to in accordance with the provisions of an applicable treaty between the parties to the dispute, specifically establishing the procedure, as is the case in the 1899 and 1907 Hague Conventions and in the Pact of Bogotá, or may be applied in a purely ad hoc manner, on the basis of a general obligation recognized by the parties to settle their disputes by peaceful means.

(b) Methods of work and venue

118. The third party exercising good offices normally establishes contact with the parties to the dispute through a number of informal meetings with each party, during which he ascertains the positions of both sides, and then transmits to the parties each other's positions with respect to the dispute.

119. Where direct contact between the parties to the dispute has broken down and the third party offering the good offices thus provides the only channel of communication, such a function may be performed by the third party in question by visiting the capitals of the parties to the dispute, or by the third party (e.g., the Secretary-General of the United Nations) requesting the parties to the dispute to send representatives to a meeting with him together with representatives of the other party to the dispute, or alone, at United Nations Headquarters in New York or at any other location.

120. In performing the functions assigned by the parties to the dispute, the third party contributing good offices towards the peaceful settlement of the dispute may, depending upon the nature of the dispute, and with consent of the parties, undertake field missions that would enable him to be fully acquainted with the issues involved. Thus, in the question of the Western Sahara, a number of technical missions were undertaken on behalf of the Secretary-General for that purpose.

5. Termination and outcome of the process

121. Good offices is a peaceful method which, having been resorted to, may give way to other peaceful procedures accepted by the parties to the dispute. There are types of disputes with respect to which resort to good offices, in the manner determined by the parties, may constitute a clear and definite phase in which the procedure itself brings about the desired result. That, for example, is the situation envisaged in article X of the Pact of Bogotá, which reads as follows:

> "Once the parties [to the dispute] have been brought together and have resumed direct negotiations, no further action is to be taken by the States or citizens that have offered their good offices or have accepted an invitation

to offer them; they may, however, by agreement between the parties, be present at the negotiations."

However, there are also types of disputes the peaceful settlement of which continues to elude the parties for a long time, thereby allowing the good offices method to remain one of the options for the possible achievement of peaceful settlement. In such situations, there is no time-limit which can be set for the termination of the good offices methods.

122. The outcome of the process depends entirely upon the attitude of the parties to the dispute. The third party exercising good offices cannot impose his will on them. Thus, in article 6 of the 1899 and 1907 Hague Conventions for the Pacific Settlement of Disputes, it was provided that the results of good offices "have exclusively the character of advice and never have binding force."

D. Mediation

1. Main characteristics and legal framework

123. Mediation is a method of peaceful settlement of an international dispute where a third party intervenes to reconcile the claims of the contending parties and to advance his own proposals aimed at a mutually acceptable compromise solution.

124. Mediation as a means of settlement of international disputes has been provided for in a variety of multilateral instruments such as the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes, the Inter-American Treaty on Good Offices and Mediation of 1936, 85/ the Charter of the United Nations, the Pact of the League of Arab States, the Charter of the Organization of American States and the American Treaty on Pacific Settlement (Pact of Bogotá) of 1948, the Charter of the Organization of African Unity and Protocol of the Commission of Mediation, Conciliation and Arbitration of 1964, 86/ the Antarctic Treaty of 1959, as well as the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex), the Final Act of the Conference on Security and Cooperation in Europe of 1975 and the 1982 Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10, annex).

125. Of the international instruments mentioned above, only a few contain specific provisions on mediation procedures. The most elaborate provisions are found in part II of both the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes, in which mediation and good offices are treated largely as interchangeable procedures. In contrast, the 1936 Inter-American Treaty, the 1948

85/ The Treaty ceased being in force after the Pact of Bogotá came into effect.

86/ The Commission was reorganized in accordance with the resolution concerning the settlement of Inter-African Disputes of the XIVth session of heads of State and Government of OAU in 1977 (see A/32/310) in order to promote the greater use of the Commission and more flexibility in its activity.

Pact of Bogotá and the 1964 OAU Protocol contain provisions which deal with mediation as a distinctive method, establishing its functions and its institutional aspects, without associating it with good offices.

126. Thus, mediation as a method of peaceful settlement is more than an adjunct to negotiations. As can be seen, for example, in the practice of the United Nations, it has emerged to become a distinctive method for facilitating a dialogue between parties to an international dispute, aimed at scaling down hostilities and tensions and for achieving, through a political process controlled by the parties, an amicable solution of an international dispute. A very important, perhaps crucial feature of mediation is that it facilitates for the disputing parties recourse to a peaceful approach to the dispute.

2. Functions

127. Mediation can be resorted to for the purposes of reducing the tension which may have developed in the course of an international dispute, thereby performing a preventive function the importance of which should not be overlooked. Thus, as provided in article 8 of the two 1899 and 1907 Hague Conventions, mediation may be initiated "with the object of preventing the rupture of pacific relations". The procedure is also resorted to as a method of bringing about a settlement where a dispute has occurred. In such a situation, emphasis is placed on its function of reconciling the opposing claims of the parties and promoting a solution, which could command a measure of satisfaction for the parties. Accordingly, article 4 of the two Hague Conventions provides that "[t]he part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance". This aspect of reconciling the views of the parties is also the main function of mediation as specified in article XX of the OAU Protocol. The informality with which a mediator is to perform his function was, however, emphasized in article XII of the Pact of Bogotá which provided, in part, as follows: "The functions of the mediator or mediators shall be to assist the parties in the settlement of controversies in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution."

128. The function of mediation under these circumstances may be aimed at achieving a provisional solution, such as bringing about a cease-fire when fighting has begun or to arrange a permanent solution, thus addressing the basic dispute. All this depends, however, on whether or not the dispute itself is one which is perceived by the parties as amenable to a political settlement, or one which involves legal claims and counter-claims, which can only be unravelled and solved through other peaceful means of settlement.

3. Procedural and institutional aspects

129. Mediation is a procedure which may be set in motion either upon the initiative of a third party whose offer to mediate is accepted by the parties to the dispute, or initiated by the parties to the dispute themselves agreeing to mediation. An offer of mediation may be accepted by a written agreement, for example. In an agreement signed at Montevideo on 8 January 1979, Chile and Argentina accepted the proposal to settle the dispute concerning the implementation of the 1977 Beagle Channel Award through the mediation of Cardinal Antonio Samoré. Mediation cannot be imposed upon the parties to an international dispute without their consent or

their acceptance of the particular mediator. As stipulated in article III of the 1936 Inter-American Treaty on Good Offices and Mediation, article XII of the 1948 Pact of Bogotá and article XX of the 1964 OAU Protocol, the mediator or mediators are to be chosen by mutual consent of the parties.

130. Mediation is usually resorted to purely on an ad hoc basis, although it may be carried out in accordance with the provisions of an applicable treaty between the parties to the dispute. Components of the mediation technique, depending on the nature of the dispute, include the communication function, clarification of issues, drafting of proposals, search for areas of agreement between parties, elaboration of provisional arrangements to circumvent or minimize issues on which the parties remain divided as well as alternate solutions, etc., with the primary goal of an early and fundamental resolution of a dispute. It is important to demonstrate to the parties to a dispute that the prospective mediator understands their respective positions, is not biased against any of them and has the necessary skills to perform the function of mediator in the particular dispute.

131. The primary requirements of the procedure are informality and confidentiality (art. XII of the Pact of Bogotá, for example). It should be noted that the political sensitivity of the mediation as a process largely explains the fact that even *post factum* the parties to a dispute as well as the mediator are often reluctant to place on record except in fairly general terms all the details and nuances of the procedure they went through.

132. The role of a mediator can develop during the settlement process. In the transfer of *West New Guinea* case of 1962, the original role of the "moderator", as requested by the then Secretary-General, Mr. U Thant, was that of facilitating and expediting "secret informal talks for the purpose of simply drafting an agenda for formal negotiations". As time went on, however, the "moderator" realized that, in order to be effective, "it would have been necessary to hammer out the agreement itself at these secret, informal talks". 87/

133. With respect to composition, the procedure depends upon the type of mediator accepted by the parties to the dispute. Thus, mediation may be undertaken by a single State, by a group of States or within the framework of an international organization such as the United Nations, its specialized agencies, other international organizations, both global or regional, or national organizations and associations or by a prominent individual acting alone or with the advice of an established committee. Within the United Nations, for example, the Security Council (resolution 61 (1948) of 4 November 1948) appointed a committee of the Council to give such advice as the mediator might require with respect to his responsibilities under the resolution. In another instance (resolution 186 (1964) of 4 March 1964) the Security Council recommended that the Secretary-General designate an appropriate mediator to represent him, whereas in a different situation (resolution 123 (1957) of 21 February 1957) the Council requested its own president to examine, with the consent of the parties, any proposals which were likely to contribute towards the settlement of the dispute.

87/ Bunker, "West New Guinea", memorandum, 11 August 1964, ms., Department of State, file, POL 19 West New Guinea, as quoted in Whiteman, *Digest of International Law* (Washington, D.C., 1971), vol. XII, p. 961.

134. On various occasions, the United Nations has thus been involved in mediation efforts, namely: through the Secretary-General, undertaking mediation for the resolution of certain conflicts; or the General Assembly in certain cases recommending to the Security Council to continue the United Nations mediation work (General Assembly resolution 2077 (XX) of 18 December 1965); or the Security Council itself offering a mediation procedure. In one instance, the Security Council urged the parties concerned to accept any appropriate offer of "mediation or conciliation" (resolution 479 (1980) of 28 September 1980), then later urged that the mediation effort be continued in a coordinated manner through the Secretary-General with a view to achieving a comprehensive, just and honourable settlement, acceptable to both sides, of all the outstanding issues, on the basis of the principles of the Charter of the United Nations, including respect for sovereignty, independence, territorial integrity and non-interference in the internal affairs of States (resolution 514 (1982) of 12 July 1982) and further called upon the parties to cooperate with the Secretary-General in the mediation efforts with a view to achieving such settlement (resolution 598 (1987) of 20 July 1987).

135. With respect to duration and termination, it is important to note that mediation is considered as a mode of settlement which, having been tried unsuccessfully, should give way to other peaceful procedures accepted by the parties to an international dispute. In case of necessity, all procedural questions, including such steps as transition from mediation to direct negotiations or a switch from mediation to any other of the peaceful settlement means, can be agreed upon in an informal, simplified way.

136. A time-limit has in some cases been established for the work of mediation. In this connection, article IV of the 1936 Inter-American Treaty provided the following:

> "The mediator shall determine a period of time, not to exceed six nor be less than three months for the parties to arrive at some peaceful settlement. Should this period expire before the parties have reached some solution, the controversy shall be submitted to the procedure of conciliation provided for in existing inter-American agreements."

Another time-limit for mediation was stipulated in article XIII of the 1948 Pact of Bogotá, which reads as follows:

> "In the event that the High Contracting Parties have agreed to the procedure of mediation but are unable to reach an agreement within two months on the selection of the mediator or mediators, or no solution to the controversy has been reached within five months after mediation has begun, the parties shall have recourse without delay to any one of the other procedures of peaceful settlement established in the present Treaty."

137. Apart from establishing the time-limit during which mediation may be undertaken, there are other provisions dealing with the determination as to when the process may be considered terminated. Thus, according to article 5 of the 1899 and 1907 Hague Conventions, "[t]he functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted."

4. Outcome of the process

138. It is generally understood that the proposals made by the mediator for a peaceful solution of a dispute are not binding upon the parties. As stipulated in article 6 of the two Hague Conventions, they "have exclusively the character of advice and never have binding force". Final results of mediation may be embodied in such instruments as an agreement, a protocol, a declaration, a communiqué, an exchange of letters or a "gentleman's agreement" signed or certified by a mediator or mediators. In the *Chaco boundary dispute* between Bolivia and Paraguay, for example, the first protocol of agreement of 1935 was witnessed by the mediatory group of Argentina, Brazil, Chile, Peru, Uruguay and the United States, under whose "auspices and moral guaranty" the treaty of peace, friendship and boundaries was signed in 1938. 88/ The acceptance by the parties of the "moral guaranty" given by the mediators may result in a further incentive to continue negotiations. As provided in article XXI, paragraph 3, of the OAU Protocol, "[i]f the means of reconciliation proposed by the mediator are accepted, they shall become the basis of a protocol of arrangement between the parties." Thus the outcome of mediation, though non-binding as such, may be used by the parties to arrive successfully at the settlement of the dispute. Unless otherwise agreed upon, generally no legal obligations arise for the mediator from the solution arrived at by way of mediation. However, there are instances when mediators take on themselves the rendering of further assistance, including that of a financial character, for the implementation of the findings of the mediation, or the guaranteeing of such implementation.

139. In the *Indus Basin dispute* case between India and Pakistan, for instance, it was first agreed in 1952, through the mediation of the International Bank for Reconstruction and Development, that particular engineering measures should be worked out to increase the water supply in the region. In 1960, then, after intensive negotiations undertaken by the Bank, a treaty was signed by the parties which specifically provided for such a plan, while another agreement concerning the financing of the project was signed by a group of countries and the Bank. 89/

E. Conciliation

1. Main characteristics, legal framework and relation to other peaceful means under the Charter of the United Nations

140. Parties to an international dispute may agree to submit it to a peaceful settlement procedure which would, on the one hand, provide them with a better understanding of each other's case by undertaking objective investigation and evaluation of all aspects of the dispute and, on the other hand, provide them with an informal third-party machinery for the negotiation and non-judicial appraisal of

---

88/ *The Chaco Peace Conference: Report of the Delegation of the United States of America to the Peace Conference Held at Buenos Aires, July 1, 1935 - January 23, 1939*, Department of State, Publication 1466, Conference Series 46, 1940, pp. 49-52 and 148-151.

89/ Signed at Karachi on 19 September 1960, United Nations, *Treaty Series*, vol. 444, p. 259; ibid., p. 207; ibid., vol. 419, p. 126.

each other's legal and other claims, including the opportunity for defining the terms for a solution susceptible of being accepted by them. They would thus submit the dispute to conciliation, the peaceful settlement procedure which combines the elements of both inquiry and mediation.

141. As a method of peaceful settlement of international dispute between States, conciliation evolved from a series of bilateral treaties concluded in the first decades of the twentieth century. Of considerable importance was the adoption in 1922 by the League of Nations of a resolution encouraging States to submit their disputes to conciliation commissions. Subsequently, a number of multilateral treaties established conciliation as one of the third-party procedures for the settlement of disputes under the treaty, the earliest of which was the 1928 Geneva General Act for the Pacific Settlement of International Disputes (later revised in 1949). On the other hand, in the light of the increasing and successful resort to conciliation after the Second World War, the Institute of International Law recommended that States "wishing either to conclude a bilateral conciliation convention or to submit a dispute which has already arisen to conciliation procedures before an ad hoc Commission" should adopt the rules for the solution of the questions entrusted to the conciliation commissions to be created and to that end, adopted on 11 September 1961 the Regulations on the Procedure of International Conciliation. 90/

142. The Charter of the United Nations, in its Article 33, paragraph 1, mentions conciliation among the peaceful means for the settlement of disputes to which Member States shall resort. It should also be noted that both the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and the 1982 Manila Declaration on the Peaceful Settlement of International Disputes refer to conciliation as one of the means that States should use when seeking an early and equitable settlement of their international disputes.

143. Other international instruments which have contributed to the evolution and development of conciliation as an independent method of peaceful settlement of international disputes distinguishable from fact-finding or inquiry include the four instruments of a regional character: the 1948 American Treaty of Pacific Settlement (the Pact of Bogotá), the 1957 European Convention for the Peaceful Settlement of Disputes, the 1964 Protocol to the OAU Charter on the Commission of Mediation, Conciliation and Arbitration (as amended in 1970) and the 1981 Treaty Establishing the Organization of Eastern Caribbean States. The global multilateral treaties whose dispute settlement clauses provide for detailed conciliation procedures include the following: the 1928 Geneva General Act for the Pacific Settlement of International Disputes as revised in 1949, the 1962 Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of Any Disputes which May Arise between States Parties to the Convention against Discrimination in Education, the 1969 Vienna Convention on the Law of Treaties, the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, the 1978 Vienna Convention on Succession of States in

---

90/ See Annuaire de l'Institut de Droit International, vol. 49 (II), 1961, pp. 385-391.

respect of Treaties, the 1982 United Nations Convention on the Law of the Sea, the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.

2. Functions

144. Reflecting the trend started by the bilateral treaties and demonstrated in the 1922 resolution of the League of Nations, the 1949 Revised Geneva General Act for the Pacific Settlement of International Disputes included a specific provision on the functions of the conciliation, reading as follows:

> "The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision." (art. 15, para. 1)

145. A provision dealing specifically with the functions of a conciliation commission in the same terms as above is contained in article 15 of the 1957 European Convention for the Peaceful Settlement of Disputes. Variations of the provision are found in article XXII of the 1948 Pact of Bogotá, in article XXIV of the 1964 OAU Protocol, in paragraphs 4 and 5 of the 1969 Vienna Convention on the Law of Treaties which became a model for subsequent multilateral treaties as reflected in articles 5 and 6 of Annex V of the 1982 United Nations Convention on the Law of the Sea. In sum, these treaties give conciliation two basic functions: to investigate and clarify the facts in dispute and to endeavour to bring together the parties to the dispute in order to reach an agreement by suggesting mutually acceptable solutions to the problem.

146. The conciliation procedure, as envisaged under some of the above treaties, is also linked to negotiations by provisions specifically requiring failure of negotiations or consultations to be a precondition for initiating conciliation. 91/ There is also a series of treaties which specifically provide that, before a dispute may be submitted to any of the adjudicatory procedures (arbitration or judicial settlement by pre-established international courts), the

---

91/ See, e.g., the Geneva General Acts of 1928 and 1949, article 1, both referring to "diplomacy", the Pact of Bogotá, article II, referring to "negotiation", the 1975 Vienna Convention on the Representation of States in their relations with International Organizations of a Universal Character, article 85, mentioning "consultations", the 1978 Vienna Convention on Succession of States in respect of Treaties, articles 41 and 42, mentioning both "consultation and negotiation".

parties to the dispute may first submit it to conciliation. 92/ In this context, conciliation is stipulated as a condition precedent to the judicial procedures, thus establishing the link between conciliation on the one hand and arbitration and judicial procedures on the other. An exception to such a link may, however, be noted in a treaty where it was equally specified that the parties to a dispute "may agree to submit it to an arbitration without prior recourse to the procedure of conciliation". 93/

3. Application of the method

147. A number of conciliation commissions were established to deal with certain cases pursuant to the bilateral treaties since 1922 and also under the 1928 Geneva General Act. Among these are, for example, the 1929 Chaco Commission, set up under the Inter-American General Convention of Conciliation; the 1947 Franco-Siamese Commission, set up in accordance with the 1928 Geneva General Act; the 1952 Belgian-Danish Commission established under the 1927 bilateral treaty between the parties; the 1955 Franco-Swiss Commission established under the 1925 bilateral treaty between the parties; and the 1956 Italo-Swiss Commission pursuant to the 1924 bilateral treaty between them. Other conciliation commissions established on an ad hoc basis by parties to a dispute include, for example, the 1958 Franco-Moroccan Commission and, more recently, the 1981 conciliation commission between Norway and Iceland in the Jan Mayen dispute.

148. The use of conciliation has also been encouraged in the United Nations. Thus, outside the framework of the multilateral treaties concluded under its auspices, by its resolution 194 (III) of 11 December 1948, the General Assembly established a Conciliation Commission for Palestine. On 28 April 1949 the General Assembly adopted resolution 268 D (III), by which it provided for the creation of a panel for inquiry and conciliation as an instrument to facilitate the compliance by Member States with the obligation under Article 33 of the Charter of the United Nations. It should also be mentioned that, within the framework of the United Nations operation in the Congo, the General Assembly, in its resolution 1474 (ES-IV) of 20 September 1960, requested the Advisory Committee on the Congo to appoint, in consultation with the Secretary-General, a conciliation commission for the Congo. The commission, which was composed of representatives of some African

---

92/ The provisions making submission of an international dispute to a conciliation a precondition to its submission to the International Court of Justice include: article IV of the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, Done at Geneva on 29 April 1958, article III of Optional Protocol Concerning the Compulsory Settlement of Disputes, Done at Vienna, on 18 April 1961, article III of Optional Protocol Concerning the Compulsory Settlement of Disputes, Done at Vienna, on 24 April 1963, and article III of Optional Protocol Concerning the Compulsory Settlement of Disputes, General Assembly resolution 2530 (XXIV), annex; United Nations registration No. A-23431.

93/ See the 1957 European Convention for the Peaceful Settlement of Disputes, article 4, paragraph 2, United Nations, Treaty Series, vol. 320, p. 102, at p. 246.

and Asian countries, 94/ carried out its mission from 1960 to 1961. Again in 1961, the General Assembly, by its resolution 1600 (XV) of 15 April 1961, decided to establish a Commission of Conciliation for the Congo, and therefore the President of the General Assembly appointed the members of the commission. 95/ However, the Government of the Congo never called on the commission to perform the function for which it was created. The Assembly also recommended in its resolution 35/52 of 4 December 1980 the use of the Conciliation Rules of the United Nations Commission on International Trade Law in cases where a dispute arose in the context of international commercial relations and the parties sought an amicable settlement of that dispute by recourse to conciliation.

149. As is shown in the above-mentioned international instruments and as follows from practice and as a result of recent improvements on aspects of its institutional arrangements, it may be observed that conciliation has evolved into a method which now has two distinctive characters. There is first of all the traditional conciliation procedure, reflected in the earlier treaties, which leaves conciliation as an optional, third-party procedure, and then there is the newer conciliation procedure which emerged in the 1969 Vienna Convention on the Law of Treaties and was further refined in the 1982 United Nations Convention on the Law of the Sea; both Conventions seek to make the resort to the conciliation procedure itself compulsory.

4. Institutional and related aspects

(a) Composition

150. In the various multilateral treaties establishing a conciliation commission, provisions are made for the appointment generally of an odd number of conciliators: usually a five-member commission but sometimes a three-member commission. Each party to the dispute has then the right to appoint either one of the three conciliators or two of the five conciliators, as the case may be. The third or the fifth conciliator, who is also often designated chairman, is normally appointed by a joint decision of the two parties to the dispute and, in some cases, by a joint decision of either the two or the four conciliators already appointed by the parties. Where difficulties arise in the appointment of either the third or the fifth member, thus preventing the completion of the composition of a commission, the parties may assign the right of making the necessary appointment in such a case to a third party, usually a prominent individual. 96/ All these provisions take into account the requirement that the parties to the dispute may not have more than one, or a designated number, of their respective nationals appointed to the commission.

94/ Ethiopia, Ghana, Guinea, India, Indonesia, Liberia, Malaysia, Mali, Morocco, Nigeria, Pakistan, Senegal, Sudan, Tunisia and the United Arab Republic.

95/ Argentina, Austria, Burma, Pakistan and Tunisia.

96/ But see article 7 of the European Convention which provides that, in such a case, appointment should be tried first by a third State, failing which it should be made by the President of the International Court of Justice.

151. There are also certain variations in the actual composition and procedure for the appointment of a conciliation commission on the basis of a list of conciliators established and maintained, pursuant to a treaty provision creating permanent conciliation commissions. As mentioned in paragraph 148 above, the usefulness of such a list was endorsed by the General Assembly in its resolution 268 D (III) of 28 April 1949. Both the 1948 Pact of Bogotá and the 1964 OAU Protocol established such a list. The process of establishing and maintaining a permanent list would then ensure that only individuals possessing the necessary qualifications for dealing with the types of disputes likely to arise under a particular treaty are included.

152. Of the multilateral treaties, the 1969 Vienna Convention on the Law of Treaties included an annex on conciliation whose paragraphs 1 and 2 are relevant to the question of the composition of a conciliation commission on the basis of a pre-constituted list of specified types of experts. The two paragraphs read as follows: 97/

> "1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.
>
> "2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:
>
> > (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and
> >
> > (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.
>
> The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.
>
> The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

97/ Compare in this connection a more elaborate provision on conciliation in section 2 of annex V of the 1982 United Nations Convention on the Law of the Sea, articles 1-3, based on the above model. (The Convention is not yet in force; reference to it throughout the present handbook recognizes its current status.)

> If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to that dispute.
>
> Any vacancy shall be filled in the manner prescribed for the initial appointment."

153. The above text established the trend in which attempts are made to avoid the institutional problems of the traditional conciliation whose composition is largely left in the hands of the parties to the dispute through direct appointment of the conciliators. The traditional conciliation thus remains a process which may be brought to an end or prevented from being set in motion, for example, simply by one of the parties to the dispute declining to respond to the invitation of the other party to constitute a conciliation commission. In contrast, the trend contained in the above text permits the constitution of the commission to be undertaken by a third party, namely, the Secretary-General of the United Nations using the list of conciliators he is required to maintain.

(b) Initiation of the process

154. A conciliation procedure may be set in motion in two ways: either by mutual consent of the States parties to an international dispute, on an ad hoc basis, relying upon a treaty in force between them and creating an obligation to settle such dispute by peaceful means; or in accordance with the terms of an applicable treaty which either specifies the details of how an ad hoc conciliation may be constituted thereunder or establishes a permanent conciliation commission within the treaty itself.

155. The treaties addressing the details of the conciliation procedure will invariably make the important choice as to whether the initiation of the process and the establishment of a conciliation commission should only be by mutual consent of the parties to the dispute or whether the procedures of the conciliation commission may be invoked by an action of only one of the parties to the dispute. The first choice is reflected in the traditional mode of conciliation, which is completely optional. The second choice, which is aimed at setting in motion a conciliation procedure through an independent compulsory process relying upon the request of only one party, reflects the newer trend started in the 1969 Vienna Convention on the Law of Treaties. The trend was refined in the 1982 United Nations Convention on the Law of the Sea, in which the traditional conciliation in article 284 and section 1 of annex V to the Convention is clearly distinguished from section 2 of the annex, specifically providing that any party to a dispute invited to submit to the conciliation procedure, as established under the relevant Part of the Convention, "shall be obliged to submit to such proceedings" and that "failure of a party or parties to the dispute to reply to notification of institution of proceedings or to submit to such proceedings shall not constitute a bar to the proceedings". Attention must however be drawn to the fact that, under this approach, it is the resort to the procedure which is compulsory. The outcome of the conciliation itself remains non-binding, as in the traditional approach. The Law of the Sea Convention accordingly provides the parties with option to use the traditional conciliation or the new "compulsory" conciliation.

(c) Rules of procedure and methods of work

156. With respect to the question of rules of procedure, most of the treaties simply provide that the commission "shall decide its own procedure" or that, the commission shall "unless the parties otherwise agree, determine its own procedure". While the treaties do not thus include detailed rules of procedure for the commission, most of them address the question of decision-making. They provide that the decision of the commission on procedural matters such as its report and recommendations shall be made by a majority vote of its members.

157. The Regulations on the Procedure of International Conciliation, 98/ referred to in paragraph 141 above, provide that the Commission will name its Secretary at its first meeting and will determine the rules of procedure, in particular the question of the submission by the parties of written pleadings as well as the question of the time and the place where the agents and counsel of the parties, as the case might be, should be heard.

158. As to the method of work, it should be recalled that conciliation combines elements of fact-finding and that it would accordingly rely upon certain techniques for gathering and evaluating the facts giving rise to the dispute. Thus in all treaties establishing conciliation as a third-party procedure there are provisions giving the commission the right to hear the parties, to examine their claims and objections and make proposals for an amicable solution or to draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement. In carrying out its functions, the commission may also summon and hear witnesses and experts and visit, with the consent of the parties, the localities in question. Other provisions provide also the right of the parties to the dispute to be represented before the commission by agents, counsel and experts appointed by them, while also being required to supply the commission with the necessary documents and information which would facilitate its work. Some treaties provide that, unless the parties otherwise agree, the work of the commission is not to be conducted in public. 99/ If a commission is able to conclude its work, it would prepare and submit a formal report containing its recommendations. Where it has not been able to reach a settlement, the commission is still expected under certain treaties to prepare the minutes of its proceedings or procès-verbaux in which no mention shall be made as to whether the commission's decisions were taken unanimously or by a majority vote. 100/ In certain treaties, there are provisions allowing conciliators to submit separate opinions if necessary.

98/ See Regulations on the Procedure of International Conciliation of 1961, *supra*, note 90, article 4.

99/ Apart from the Geneva General Acts, article 10, and the 1957 European Convention, article 11, neither the 1948 Pact of Bogotá, the 1964 OAU Protocol nor most of the recent multilateral conventions modelled after the conciliation procedure of the 1969 Vienna Convention on the Law of Treaties address this aspect of the commission's method of work.

100/ Geneva General Acts of 1928 and 1949, article 15, paragraph 2; and the 1957 European Convention, article 15, paragraph 2. See also the 1948 Pact of Bogotá, article XXVII, calling for the preparation of a summary of the work of the commission in case it receives no settlement.

(d) Duration and termination

159. Consistent with its function as a method capable of bringing about an amicable settlement of the dispute referred to it or with its function of providing the necessary link between the non-judicial and the judicial procedures where so required, conciliation should be expected to reach its desired result within a reasonable time. Thus, as to duration, various time-limits within which a conciliation commission is expected to conclude its work have been stipulated. A six-month duration is common in earlier multilateral treaties, 12 months is now the duration of conciliation found in recent multilateral treaties influenced by the 1969 Vienna Convention on the Law of Treaties, annex, paragraph 6.

160. Since a conciliation commission may indeed conclude its work before the fixed time-limit or may, with the consent of the parties, extend its work beyond the fixed time-limit, it is important to establish when the process may be said to have been terminated, thus opening the way, if a settlement has not been reached, for the other means for the settlement of the dispute under a treaty. While the earlier multilateral treaties and those modelled after the annex to the 1969 Vienna Convention on the Law of Treaties do not address the question of termination of conciliation, the issue was taken up in the 1982 United Nations Convention on the Law of the Sea, which contains in its annex V, article 8, the following provision:

> "The conciliation proceedings are terminated when a settlement has been reached, when the parties have accepted or one party has rejected the recommendations of the report by written notification addressed to the Secretary-General of the United Nations, or when a period of three months has expired from the date of transmission of the report to the parties."

(e) Expenses and other financial arrangements

161. Taking into account the administrative expenses that may be provided free by virtue of using existing secretariats, all the other expenses connected with the functioning of conciliation commissions are to be borne by the parties to the dispute. In most of the treaties, it is stipulated that such expenses shall be divided equally, while in others the manner in which the expenses are to be borne by the parties is left open. Since the 1969 Vienna Convention on the Law of Treaties is silent on this point, it is important to note that the Secretary-General of the United Nations has since addressed the question in connection with conciliation under the treaty. He has indicated that no honorariums could be paid by the United Nations to members of commissions unless the General Assembly specifically so decided and that he interpreted the expression "expenses of the Commission" to mean "the expenses involved in the functioning of the conciliation commission as a body", which would include travel and subsistence costs of members, the provision of a meeting place and of the necessary secretariat services for the meetings, but would not include expenses before a commission is constituted or after it has finished its work, or the individual expenses of the parties (travel, subsistence and honorariums of their agents and counsel and of witnesses called by them, cost of preparation of written pleadings in the language of submission, etc.). 101/

101/ See Official Records of the General Assembly, Twenty-fourth Session, Annexes, agenda item 94 (a) and (c), document A/C.6/397.

(f) Venue and secretariat of the commission

162. Unless a conciliation commission is permanently created under a treaty in which its seat or secretariat is also established, an ad hoc commission may meet at the place selected by the parties to the dispute or by its chairman, as may be agreed. In such cases, the venue of the commission could be the alternate capitals of the parties to the dispute or other places within their respective territories, or perhaps in some neutral place in a third State. All these possibilities would take into account, among other things, the need to have available the necessary facilities which would enable the commission to perform its task with minimum difficulties.

163. While the permanent commissions may normally use their designated seats, they are also free, for reasons of practicality, to decide to meet at another place in connection with a given case. In making their choices, account should be taken of the fact that the lack of an efficient administrative secretariat, i.e., an administrative machinery on which a commission could rely, may hamper its work. The question of a secretariat may thus loom large in the case of ad hoc commissions. However, those created under the auspices of global or regional international organizations would normally avail themselves of secretariat arrangements which the organization may provide.

5. Termination and outcome of the process

164. It is well established that the results of a conciliation process are normally in the form of non-binding recommendations to the parties to the dispute. Thus the 1969 Vienna Convention on the Law of Treaties codified the practice in paragraph 6 of its annex establishing conciliation which reads, in part, as follows:

> "The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute."

165. Certain treaties have, however, subsequently departed from the above practice by either introducing variations to it or by giving the outcome of conciliation a binding character. Thus, the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character has the following provision in its article 85, paragraph 7, on the outcome of the conciliation procedure:

> "The recommendations in the report of the Commission shall not be binding on the parties to the dispute *unless all the parties to the dispute have accepted them. Nevertheless, any party to the dispute may declare unilaterally that it will abide by the recommendations in the report so far as it is concerned*." (emphasis added)

166. Another variation is found in the 1985 Vienna Convention for the Protection of the Ozone Layer, providing that: "The Commission shall render a final and recommendatory award, *which the parties shall consider in good faith*" (emphasis added). Thus, the results of the commission may be seen as having some legal effects since they are in the form of recommendations which the parties are required to consider in good faith.

167. A complete departure from the model provided for in the Vienna Convention on the Law of Treaties is, however, found in the 1981 Treaty establishing the Organization of Eastern Caribbean States, which created a conciliation procedure whose recommendations are compulsory and binding. Thus, paragraph 3 of article 14 of the Treaty provides that "Member States undertake to accept the conciliation procedure referred to in the preceding paragraph as compulsory. Any decisions or recommendations of the Conciliation Commission in resolution of the dispute shall be final and binding on the Member States". Moreover, in the annex establishing conciliation as the procedure for settlement of dispute under the treaty, paragraph 6 reads, in part, that "[t]he report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall be binding upon the parties".

F. Arbitration

1. Main characteristics and legal framework

168. The 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes described the object of international arbitration as the settlement of disputes between States by judges chosen by the parties themselves and on the basis of respect for law. 102/ They further provided that recourse to the procedure implied submission in good faith to the award of the tribunal. Accordingly, one of the basic characteristics of arbitration is that it is a procedure which results in binding decisions upon the parties to the dispute.

169. The power to render binding decisions is, therefore, a characteristic which arbitration shares with the method of judicial settlement by international courts whose judgements are not only binding but also, as in the case of the International Court of Justice, final and without appeal, as indicated in article 60 of the I.C.J. Statute. For this reason, arbitration and judicial settlement are both usually referred to as compulsory means of settlement of disputes.

170. However, while both arbitration and judicial settlement are similar in that respect, the two methods of settlement are nevertheless structurally different from each other. Arbitration, in general, is constituted by mutual consent of the States parties to a specific dispute where such parties retain considerable control over the process through the power of appointing arbitrators of their own choice. 103/ By contrast, judicial settlement relies upon pre-constituted international courts or tribunals, the composition of which is not to the same extent subject to control by the parties to the dispute.

102/ See articles 15 and 37 respectively of the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes (*supra*, note 21).

103/ Sometimes the parties may agree in advance to appoint the arbitrators from among a pre-existing list. For example, the 1907 Hague Convention provides such a list. Similarly, the 1982 United Nations Convention on the Law of the Sea provides for a list of arbitrators in accordance with article 2 of annex VII on "Arbitration" and article 2 of annex VIII on "Special arbitration".

171. For the purposes of the present handbook, the study of arbitration has been limited to the study of such institutions established between States, in which States plead directly; and between States and international organizations. 104/

172. Apart from the 1899 and 1907 Hague Conventions, arbitration, as a means of peaceful settlement of disputes between States, is provided in a number of multilateral treaties of global or regional character and also in a number of bilateral treaties. 105/ Arbitration has thus emerged as one of the third-party procedures most frequently chosen for settling, for example, territorial and boundary disputes, 106/ disputes concerning interpretation of bilateral or

---

104/ There are other types of arbitration tribunals to which States as well as their nationals have access and to which they are allowed to submit claims. These tribunals were in general referred to as Mixed Arbitration Tribunals. An early and perhaps the most important example of this type of tribunal is the Mixed Arbitral Tribunals set up after the First World War by the Treaty of Versailles, Article 304, see *Recueil des décisions des Tribunaux arbitraux mixtes* 1922-1930, 10 vols.

The most contemporary practice of Mixed Arbitral Tribunals is the Iran-United States Claims Tribunal set up by the Algiers Declaration in 1981. *See* Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, *International Legal Materials*, vol. 20, p. 230. For the collection of the decisions of the Tribunal, see *Iran-U.S. Claims Tribunal Reports*, (1981-), 21 volumes of which are so far printed.

105/ See generally provisions of treaties summarized in United Nations, *Systematic Survey of Treaties for the Pacific Settlement of International Disputes, 1928-1948* (United Nations publication, Sales No. 49.V.3) and *A Survey of Treaty Provisions for the Settlement of International Disputes, 1949-1962* (United Nations publication, Sales No. 66.V.5) (1966). Other provisions on arbitration are found in, for example, the series of treaties contained in *The Work of the International Law Commission*, 4th ed., (United Nations publication, Sales No. E.88.V.1).

106/ See, e.g., the *Rann of Kutch* arbitration (India *v.* Pakistan) in *Reports of International Arbitral Awards*, vol. XVII (United Nations publication, Sales No. E/F.80.V.2) (hereinafter referred to as UNIRAA), *Argentina-Chile frontier case*, UNIRAA, vol. XVI, pp. 109-181; *the case concerning the delimitation of the continental shelf between the United Kingdom and France*, ibid., vol. XVIII, pp. 3-129; the *Beagle Channel* arbitration between Chile and Argentina, in *International Law Reports*, vol. 52, p. 93; *Lake Lanoux* arbitration (France *v.* Spain), ibid., vol. 24, p. 101. *Venezuela-British Guiana Boundary Arbitration* (Venezuela v. Great Britain), in *British and Foreign State Papers*, vol. 92, 1899-1900, p. 16; the *Alaska Boundary* case (Great Britain v. United States), ibid., vol. XV, pp. 481-540; the *Walfish Bay Boundary* case (Germany *v.* Great Britain), ibid., vol. XI, pp. 263-308; the *Boundary case between Costa Rica and Panama*, ibid., pp. 519-547; *Andes Boundary* case (Argentina *v.* Chile), ibid., vol. IX, pp. 29-49.

multilateral treaties, 107/ and those relating to claims of violation of international law. 108/ It may be observed in this connection that both the 1899 and the 1907 Hague Conventions established the Permanent Court of Arbitration to facilitate the settlement of disputes which diplomacy had failed to settle, 109/ while the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948 provided that States parties might, if they so agree submit to arbitration "differences of any kind, whether judicial or not". 110/

173. There are, however, types of disputes which States have excluded from arbitration constituted under a particular treaty, such as disputes arising from facts or events which occurred prior to the treaty establishing the arbitral procedure in question, 111/ disputes relating to questions which are within the exclusive jurisdiction of a State, 112/ disputes which concern the territorial integrity of a State, 113/ disputes concerning military activities, including

---

107/ See, for example, the case concerning the Air Transport Agreement of 27 March 1946 (United States v. France), 1963, ibid., vol. XVI, pp. 5-71; Air Transport Agreement of 6 February 1964 (United States v. Italy), ibid., pp. 81-105; Air Service Agreement of 27 March 1946 (United States v. France), ibid., vol. XVIII, pp. 417-453. See also the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of June 1947, United Nations, Treaty Series, vol. 11, p. 10, article VIII, section 21, at p. 30; the Interim Agreement on Privileges and Immunities of the United Nations concluded between the Secretary-General of the United Nations and the Swiss Federal Council of June 1946, ibid., vol. 1, p. 164, article VIII, section 27, at p. 179; and the Agreement regarding the Headquarters of the United Nations Industrial Development Organization (with exchange of notes and aide-mémoire), of 13 April 1967, ibid., vol. 600, p. 93, article XIV, section 35, at p. 124.

108/ See, for example, The Alabama claims (United States v. United Kingdom), Moore, History and Digest of the International Arbitration to which the United States has been a party (1898), vol. I, p. 653; the Trail Smelter arbitration (United States v. Canada), UNIRAA, vol. III, pp. 1907-1982; Lake Lanoux arbitration (France v. Spain), ibid., vol. XII, pp. 281-317. See also, generally, the cases contained in UNIRAA, vols. I-IX.

109/ Article 38 of the 1907 Hague Convention. The 1899 and the 1907 Conventions established the Permanent Court of Arbitration, which still exists and has its seat at The Hague. It has an International Bureau serving as a Registry for the Court. As provided in articles 21 and 42 of the two Hague Conventions, respectively, "The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special tribunal". Membership of the Court is constituted by a general list to which each Contracting Party to the Conventions has the right to nominate four individuals as arbitrators.

110/ See article XXXVIII of the Pact of Bogotá, supra, note 34, at p. 96.

111/ See, e.g., the relevant provisions of the treaties in Systematic Survey ..., supra, note 105, pp. 23 and 24.

112/ Ibid., pp. 32-34.

113/ Ibid., p. 34.

military activities by government vessels and aircraft engaged in non-commercial service, 114/ and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it in the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by another peaceful procedure. 115/

2. Institutional and related aspects

(a) Types of arbitration agreements

174. Consent of the parties to arbitration may be expressed prior to or after the occurrence of a dispute. Parties may agree to submit all or special categories of future disputes to arbitration. Such commitment may be made in multilateral or bilateral treaties entirely devoted to the peaceful settlement of disputes. 116/ A

114/ See, e.g., article 298 (b) of the 1982 United Nations Convention on the Law of the Sea (United Nations publication, Sales No. E.83.V.5), p. 103.

115/ See, e.g., article 298 (c) of the 1982 United Nations Convention on the Law of the Sea, ibid.

116/ One of the well-known multilateral general dispute settlement agreements is the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907. It was one of the more successful first attempts to design a multilateral convention aimed specifically at proposing a variety of means and procedures for the peaceful settlement of disputes. The Convention establishes a system of arbitration for which new agencies were created. The most important part of the Convention was devoted to the organization and the operation of the Permanent Court of Arbitration. The Permanent Court was created with the object of facilitating an immediate recourse to arbitration of international disputes which could not be settled by diplomacy.

The Revised General Act for the Pacific Settlement of International Disputes of 1949 is another important multilateral general dispute settlement agreement. Chapter III is devoted to arbitration. The chapter provides a system for the establishment of the tribunal, including the mode of appointment and number of arbitrators, the cases of vacancies and so forth. Under article 21 of the Revised General Act the parties may agree to a different mode of establishing the tribunal. See United Nations, Treaty Series, vol. 71, p. 101.

An example of a bilateral treaty wholly devoted to the peaceful settlement of disputes is the Treaty for Conciliation, Judicial Settlement and Arbitration (with annexes) between the United Kingdom of Great Britain and Northern Ireland and Switzerland, signed at London on 7 July 1965. Chapter IV of the Treaty is devoted to arbitration. It sets out the number of arbitrators, their nationality and their appointment. It also deals with the question of vacancy and the scope of the competence of the arbitration tribunal. The annex to this Treaty contains recommended rules of procedure for the arbitration tribunal that the parties may wish to choose. Under article 15 of the Treaty the parties may agree to a different mode of establishment of the arbitral tribunal. See ibid., vol. 605, p. 205.

more common method is by inclusion of a compromissory clause in a treaty, by which parties agree to submit all or part of their future disputes regarding that treaty to arbitration. Parties may also agree to go to arbitration by a special agreement or a *compromis* after the occurrence of a dispute.

175. A compromissory clause is a provision in a treaty which provides for the settlement by arbitration of all or part of the disputes which may arise in regard to the interpretation or application of that treaty. Many compromissory clauses are drafted in general terms. 117/ The compromissory clauses, while expressing the consent of the parties to submit all or certain types of disputes to arbitration, generally lack specificity as to the rules of establishment and operation of the tribunal. To submit a dispute to arbitration under a compromissory clause, the parties usually need to conclude a special agreement (*compromis*).

176. The special agreements (*compromis*) are however more comprehensive because they deal with the constitutional aspects of the arbitral tribunal being set up. Thus in a *compromis* the parties to the dispute may deal with the following issues: 118/ the composition of the tribunal, including the size and the manner of appointments and the filling of vacancies; the appointment of agents of the parties to the dispute; the questions to be decided by the tribunal; the rules of procedure and method of work of the tribunal including, where applicable, the languages to be used; the applicable law; the seat and administrative aspects of the tribunal, the financial arrangements for the expenses of the tribunal and the binding nature of the award of the tribunal and obligations and rights of the parties relating thereto.

177. While the above is only illustrative of the issues to be covered by a *compromis* as a minimum, the degree of their incorporation in a *compromis* differs in each case as decided by the parties to a dispute. Thus, some *compromis* are silent on the question of applicable law, 119/ while others include provisions concerning privileges and immunities of the members of the arbitral tribunal, 120/ and yet others address the question of interim arrangements for preserving the respective rights of the parties to the dispute, pending the conclusion of the work of the arbitral tribunal in question. 121/ Some *compromis* are brief and contain only

---

117/ For some examples of compromissory clauses, see *Systematic Survey ...*, *supra*, note 105.

118/ Compare in this connection the Model Rules on Arbitration Procedure, prepared by the International Law Commission. See *The Work of International Law Commission*, *supra*, note 105, p. 146, article 2, at pp. 147 and 148.

119/ See also paragraphs 178-195 below.

120/ See, e.g., the 30 July 1954 *Compromis* between the United Kingdom (acting on behalf of the Ruler of Abu Dhabi) and the Sultan of Saudi Arabia, in United Nations, *Treaty Series*, vol. 201, p. 317, article 16.

121/ See, e.g., the *Compromis* of 16 July 1930 regarding the boundary dispute between Guatemala and Honduras, article 16, in UNIRAA, vol. II, p. 1312; the *Compromis* of 11 July 1978 between the United States and France in the case concerning the air service agreement, paragraph 3, in ibid., vol. XVIII, p. 421, at p. 422.

essential elements without dealing with administrative and financial aspects of the tribunal, its method of work or rules of procedure. 122/ However, there are recent examples of more elaborate ones, such as the *Compromis* of 10 July 1975 between France and the United Kingdom concerning the delimitation of the continental shelf 123/ and the *Compromis* of arbitration of 11 July 1978 between the United States and France concerning an Air Service Agreement. 124/

(b) *Composition*

178. Arbitration as a third-party procedure may be performed by one individual, appointed by the parties to the dispute, as a sole arbitrator or umpire, 125/ or by a group of individuals appointed to form an arbitral tribunal. 126/ In most treaties establishing an arbitration tribunal, an odd number of arbitrators is usually provided: some require five arbitrators 127/ while the most common

---

122/ See, e.g., the *Compromis* of 20 March 1899 relating to the arbitration between Guatemala and Mexico, UNIRAA, vol. XV, p. 27. Others were designated as protocol. See, e.g., ibid., pp. 51 and 52.

123/ See ibid., vol. XVIII, p. 3, at pp. 5-7.

124/ Ibid., p. 417, at pp. 421-423.

125/ See, e.g., the appointment of the King of Italy as the sole arbitrator under the treaty of 6 November 1901 between the United Kingdom and Brazil regarding the boundary dispute between British Guiana and Brazil, in ibid., vol. XII, p. 17; and *The Island of Palmas* in ibid., vol. II, p. 830. Some multilateral conventions have also provided for a single arbitrator, e.g., the Convention on the International Hydrographic Organization of 3 May 1967, article XVII, in United Nations, *Treaty Series*, vol. 751, p. 41; the European Agreement concerning an Aeronautical Satellite Programme of 9 December 1971, article 13, in ibid., vol. 906, p. 3 and the Agreement for the establishment of the Caribbean Meteorological Organization of 19 October 1973, article 23, in ibid., vol. 946, p. 543.

126/ There is no limit on the number of arbitrators. The parties may agree on as many arbitrators as they wish.

127/ See, e.g., Geneva General Act for the Pacific Settlement of International Disputes, article 22, League of Nations, *Treaty Series*, vol. 93, p. 345. See also, e.g., the agreement between the United Kingdom and France of 10 July 1975 regarding the establishment of an arbitration tribunal for the resolution of the Continental Shelf boundary disputes in the English Channel providing for a court of arbitration consisting of five members: one member appointed each by France and by the United Kingdom, and three neutral members, UNIRAA, vol. XVIII, p. 5, article 1 of the *compromis*. The *compromis* of 11 September 1986 between Egypt and Israel regarding their boundary dispute in the Taba beachfront established a five-member tribunal. Each party appointed one member and the three other members, one of which was the president, were appointed by the parties jointly. See article 1 of the *compromis*, *International Legal Materials*, vol. 26, p. 1. See also Agreement on Safeguards practice has been arbitral tribunal of three members. 128/ Each party to the dispute has then the right to appoint either one of the three arbitrators, or two of the five arbitrators as the case may be. The third or the fifth arbitrator, who is also often designated chairman, is normally appointed by a joint decision of parties to the dispute and, in some cases, by a joint decision of the respective arbitrators already appointed by the parties. Where difficulties arise in the appointment of either the third or the fifth member, thus preventing the completion of the composition of the tribunal, the parties to the dispute may assign the right of making the necessary appointment in such a case to a third State, or a prominent individual. 129/ The provisions on the composition of the tribunal that stipulate

---

(continued)

under the Non-Proliferation Treaty on 5 April of 1973, article 22, United Nations, *Treaty Series*, vol. 1008, p. 3; the 1982 United Nations Convention on the Law of the Sea, annex VII, article 3, and annex VIII, article 3, *supra*, note 114, pp. 150 and 153 respectively.

128/ See, e.g., International Convention for the Protection of new Varieties of Plants of 2 December 1961, article 36, ibid., vol. 815, p. 89; Protocol on Privileges and Immunities of the European Space Research Organization of 31 October 1963, article 27, ibid., vol. 805, p. 279; International Convention for the Prevention of Pollution from Ships of 2 November 1973, Protocol 2, article 3, *International Legal Materials*, vol. 12, p. 1441; and the first two Lomé Conventions between the European Economic Community and the African, Caribbean and Pacific Countries, article 81 of the first Lomé Convention of 28 February 1971, ibid., vol. 14, p. 604, and article 176 of the second Lomé Convention of 1 October 1979, ibid., vol. 19, p. 376.

129/ See, e.g., article 45 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, in which the task is assigned to a third State, and article 23 of the 1949 Revised General Act for the Pacific Settlement of International Disputes, in which that appointment task is first assigned to a third State and then to the President of the International Court of Justice. The President of ICJ is alone provided in article 21 of the 1957 European Convention for the Peaceful Settlement of Disputes. Under the 1982 United Nations Convention on the Law of the Sea, annex VIII, article 3 (e), the appointment is to be made by a third State first and then by the Secretary-General of the United Nations.

There may be cases where one party to a dispute refuses to appoint its arbitrator and therefore prevents the composition of the tribunal. See the analysis of such a situation and the opinion of the International Court of Justice in the second phase of the *Interpretation of Peace Treaties*, *I.C.J. Reports 1950*, pp. 228 and 229; and the advisory opinion of the International Court of Justice in the *Applicability of the Obligation to Arbitrate under section 21 of the United Nations Headquarters Agreement of 26 June 1947* (*I.C.J. Reports 1988*, p. 12). To remedy this impasse, an alternative appointing authority may be chosen. This would allow the appointment to be made by the appointing authority if one party fails to appoint its member within a specified period of time.

the period within which the individuals assigned the duty to make such necessary appointments have to discharge the duty (e.g., within 60 days from the date of the reference of the dispute to arbitration) 130/ and also the time period within which the parties to the dispute are required to make their respective initial appointments to the tribunal (e.g., 30 days from the same date of reference of the dispute to arbitration) 131/ in accordance with terms of the applicable treaty. The provisions also address the questions of filling any vacancy which may occur in the tribunal and usually stipulate that such vacancies are to be filled in the same manner as the initial appointment. 132/

179. Some arbitral tribunals are composed of individuals appointed by the parties relying upon a pre-constituted list of arbitrators such as that of the Permanent Court of Arbitration established under the 1899 and 1907 Hague Conventions, 133/ while other arbitral tribunals are composed without the benefit of a pre-constituted list. 134/ In both types of arbitrations, however, the question of nationality and the qualifications of arbitrators are usually addressed. In some cases, the parties stipulate in the arbitration agreement specific qualifications of the individuals appointed as arbitrators. 135/

(c) *Rules of procedure*

180. Some *compromis*, after specifying certain rules of procedure, leave the determination of the remaining procedural questions entirely to the arbitration tribunal. For example, one *compromis* provided that "the Tribunal shall, subject to

---

130/ United Nations Convention on the Law of the Sea, annex VII, article 3, and annex VIII, article 3.

131/ Ibid.

132/ Ibid.

133/ See articles 15 and 37 respectively of the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes. See also the 1982 United Nations Convention on the Law of the Sea, annex VII, article 2, and annex VIII, article 2. The list referred to in annex VII is for the arbitration tribunal composed of judges or prominent international lawyers, while that in annex VIII is for a special arbitration tribunal composed of individuals who are not necessarily lawyers but experts in the subject-matter of the law of the sea dispute.

134/ See, e.g., article 22 of the 1928 Geneva General Act for the Pacific Settlement of International Disputes.

135/ Compare article 2 (1) of annex VII and article 2 (3) of Annex VIII of the 1982 United Nations Convention on the Law of the Sea and articles 23 and 44 of the 1899 and 1907 Hague Conventions respectively.

the provisions of this *compromis*, determine its own procedure and all questions affecting the conduct of the arbitration." 136/ Another *compromis* granted a broad competence to the arbitrator in the determination of its own rules of procedure. It provided that "the arbitrator shall decide any questions of procedure which may arise during the course of the arbitration." 137/ Similarly, a broad competence was provided for another tribunal. The *compromis* of that tribunal stated that "the Court shall, subject to the provisions of this Agreement, determine its own rules of procedure and all questions effecting the conduct of the arbitration". 138/ Another formulation of a broad language is found in a *compromis* which read: "The arbitrator shall have the necessary jurisdiction to establish procedure and to dictate without any restriction whatsoever other resolutions which may arise as a consequence of the question formulated, and which, in conformity with his judgement, may be necessary to expedite to fulfil in a just and honourable manner the purposes of this Convention". 139/ Some *compromis*, on the other hand, have used a more restrictive language in granting full competence to the tribunal to set rules of procedure. For example, one *compromis*, after specifying rules of procedure for the arbitration tribunal, provided that: "In determining upon such further procedure and arranging subsequent meetings, the tribunal will consider the individual or joint requests of the agents of the two governments". 140/ Another agreement instructs the tribunal to ascertain the views of the parties before determining a particular rule of procedure. 141/

136/ Article V of the *Compromis* of 22 January 1963 between France and the United States regarding the interpretation of the Air Transport Services Agreement, UNIRAA, vol. XVI, p. 9.

137/ Article 5 of the *Compromis* of 23 January 1925 between the United States and the Netherlands regarding the *Island of Palmas* case, ibid., vol. II, p. 829.

138/ See article 3 of the *Compromis* of 10 July 1975 between France and the United Kingdom regarding the delimitation of their continental shelf, ibid., vol. XVIII, p. 5.

139/ See article 1 of the *Compromis* of 12 January 1922 between the United Kingdom and Costa Rica regarding certain claims against Costa Rica (*Tinoco* case), League of Nations, *Treaty Series*, vol. XVII, p. 151.

140/ The Convention of 3 August 1935 between the United States and Canada concerning the settlement of difficulties arising from operation of a smelter at trail, UNIRAA, vol. III, p. 1907.

141/ The Treaty for Conciliation, Judicial Settlement and Arbitration (with annexes) of 7 July 1965 between the United Kingdom of Great Britain and Northern Ireland and Switzerland, United Nations, *Treaty Series*, vol. 605, p. 205.

(d) Applicable law

181. Parties to an arbitration may agree on the law that the tribunal should apply to their disputes. Some arbitration agreements require that specific rules be applied 142/ and some only make a general reference to the applicable law. Many arbitration agreements specifically stipulate international law as the applicable law, 143/ and some call for the application of the principles of international law. 144/ Some arbitration agreements have remained silent on this issue. In such cases a solution has been recommended in article 28 of the 1949 Revised General Act. Accordingly, if nothing is laid down in the arbitration agreement on the law applicable to the merits of the dispute, the tribunal should apply the substantive rules enumerated in article 38 of the Statute of the International Court of Justice. 145/

182. Still other arbitration agreements have chosen principles of equity, justice, equitable solution, etc., as applicable to the dispute. 146/ The application of these principles is recommended by article 28 of the 1949 Revised General Act as the last resort, where there is no applicable law as enumerated in Article 38 of the Statute of the Court. Article 28 of the Revised General Act reads:

> "If nothing is laid down in the special agreement or no special agreement has been made, the Tribunal shall apply the rules in regard to the substance of the dispute enumerated in Article 38 of the Statute of the International Court of Justice. In so far as there exists no such rule applicable to the dispute, the Tribunal shall decide *ex aequo et bono*." 147/

142/ See the Treaty of Washington of 6 May 1871, which constituted the basis for establishing the *Alabama claims* tribunal between the United States and the United Kingdom, in Moore, *International Arbitrations*, vol. I, p. 547. See also the Treaty between the United Kingdom and Venezuela regarding the determination of the boundary line between the Colony of British Guiana and Venezuela, in Parry, *Consolidated Treaty Series*, vol. 184, p. 188.

143/ See, e.g., those mentioned in *Systematic Survey ...*, *supra*, note 105, p. 117.

144/ Ibid.

145/ United Nations, *Treaty Series*, vol. 71, p. 101. A similar provision has appeared in numerous arbitration agreements. See *Systematic Survey ...*, *supra*, note 105, pp. 117 and 118.

146/ See, e.g., the "equitable solution" principle applied by the 1872 arbitral tribunal in the *Delagoa Bay* case (Great Britain v. Portugal); the 1907 Boundary arbitration between Colombia and Ecuador; and the 1893 *Bering Sea* case (Great Britain *v*. United States); and the *North Atlantic Coast Fisheries* cases (Great Britain *v*. United States).

147/ United Nations, *Treaty Series*, vol. 71, p. 101.

(e) *Methods of work and proceedings before the tribunal*

183. Parties to a dispute submitted to an arbitral tribunal are represented by agents whose appointment and powers may be stipulated in the *compromis* 148/ indicating the time-period within which they are to be appointed. 149/ Such agents are usually entitled to nominate an assistant agent as occasion may require, and may be further assisted by such advisers, counsel and staff as the agent deems necessary.

184. The agents of the parties to the dispute file written pleadings which may be limited to memorials and counter-memorials 150/ and which may be submitted in the order and within the time-limits determined by the Tribunal. Such determination may also be made by the tribunal with respect to the oral proceedings 151/ and relevant documentary evidence. Thus, in the *compromis* relating to the arbitration of a boundary dispute, the following was stipulated:

> "The Court of arbitration shall, subject to the provisions of the present Agreement (Compromiso), after consultation with the Parties, determine the order and dates of the delivery of written pleadings and maps and all other questions of procedure, written and oral, that may arise. The fixing of the order in which these documents shall be delivered shall be without prejudice to any question or of burden of proof." 152/

148/ While some *compromis* do not address specifically the question of agents as such, parties to the dispute proceed to be presented by their agents in the tribunal. See, e.g., the 30 June 1964 *Compromis* of arbitration between Italy and the United States concerning their mutual air transport agreement, ibid., vol. 529, p. 314.

149/ While some *compromis* do not address the question of time-limits for the appointment of the agents, see the 22 January 1963 *Compromis* of arbitration between France and the United States, ibid., vol. 473, p. 3; others have stipulated a time-limit. See, e.g., the 14-day period stipulated in the France-United Kingdom *compromis* of 10 July 1975, UNIRAA, vol. XVIII, p. 5, article 4, and also in the 24 February 1955 *Compromis* between Greece and the United Kingdom in the *Ambatielos* arbitration, ibid., vol. XII, p. 88, article 4.

150/ See, e.g., article 5 in the *Ambatielos* arbitration, ibid.

151/ Some *compromis* do not provide for oral proceedings, while others leave it to the determination of the tribunal as appropriate.

152/ Ibid., vol. XVI, p. 119. A similar provision was stipulated in the 22 July 1971 compromise between Argentina and Chile concerning the *Beagle Channel arbitration*. See Cmd. 4781.

185. With respect to the question of documentary evidence, article 75 of the 1907 Hague Convention provided that "the parties undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the dispute." 153/

186. As appropriate, arbitral tribunals have also heard witnesses on behalf of parties to the dispute and have also made use of expert witnesses providing expert opinion to the tribunal in a given issue, as may be explicitly stated in a *compromis*. 154/ The arbitrators as well as the parties to the dispute have the right to cross-examine such witnesses in the manner stipulated in a *compromis*. 155/ These methods of work are usually employed in boundary disputes with respect to which arbitral tribunals also exercise the right to conduct their own investigations and, with the consent of the parties, visit the localities of the dispute.

(f) Seat and administrative aspects of an arbitral tribunal

187. The seat of the arbitral tribunal is usually specified in the *compromis*. Where there is no such specification, the Tribunal itself may, as recommended by its president, 156/ determine where to conduct its business.

188. The arbitration agreement can also specify the place where the tribunal shall hold its first meeting and leave the choice of the place for subsequent meetings to the tribunal. The choice of the seat of the tribunal is made on the basis of administrative convenience and financial considerations. For example, when the tribunal is required to work in two languages, it would be easier to hold its meetings in a place where there was easy access to interpreters and translators as well as clerks who could work in both languages. There are other administrative and technical considerations which would come into consideration in choosing the place of the tribunal.

153/ As to the question of burden of proof, it was for example agreed in one case that the matter rests squarely upon the party claiming the existence of an obligation which is allegedly breached. See the arbitration between Greece and the United Kingdom in the *Diverted Cargoes* case, UNIRAA, vol. XII, p. 53, at p. 70; English text in *International Law Reports* (Lauterpacht, ed., 1955), p. 825.

154/ See, e.g., the 30 July 1954 *Compromis* between the United Kingdom and Saudi Arabia, United Nations, *Treaty Series*, vol. 201, p. 317, articles 7 and 10.

155/ See, e.g., the 30 June 1965 *Compromis* between India and Pakistan regarding boundary arbitration, UNIRAA, vol. XVII, p. 9, and the 16 July 1930 *compromis* between Guatemala and Honduras, ibid., vol. II, p. 1312.

156/ See, e.g., article 5 of the 10 July 1975 *Compromis* between France and the United Kingdom in the case concerning the delimitation of the continental shelf, ibid., vol. XVIII, pp. 5 and 6.

189. Arbitral tribunals are usually assisted by a secretariat or a registry. The function of the registry is to act as a channel for communication between the parties and the tribunal, to arrange for the custody of papers and documents submitted to the tribunal, to provide interpreters and translators and to conduct all administrative matters of the tribunal. Standing tribunals, which deal with a number of disputes over a long period of time, normally have an organized secretariat established in accordance with the *compromis*. For ad hoc tribunals, the parties may agree to empower the tribunal or its president to appoint a secretary or a registrar and such supporting staff as may be necessary. The parties may also agree to appoint jointly a secretary or a registrar, and each appoints supporting staff in equal numbers.

(g) Expenses of an arbitral tribunal

190. Two kinds of expenses are involved in an arbitration proceeding. One relates to the preparation of each party's case and its presentation to the arbitral tribunal. Such expenses include for example, counsel's fees, experts' fees, expenses for gathering of evidence, translation of documents, travel and so forth which are borne by the parties themselves. Other expenses include the common expense of the arbitral tribunal, such as the arbitrators' fees, the salary of the registrar and the staff of the arbitral tribunal, interpreters, clerical facilities and so forth.

191. Parties to the disputes bear their own expenses and share the administrative costs of the tribunal. In common practice the arbitrators' fees are borne equally by both parties. Occasionally, however, some *compromis* provide that each party pay the fees of their appointed arbitrator. [157/] If the parties provide technical assistance to the arbitral tribunal, each party is responsible for the remuneration of its own expert.

3. Outcome of arbitration and related issues

192. The outcome of an arbitration is an award which is binding upon the parties to the dispute. Invariably, in all the *compromis*, parties to the dispute further stipulate that they undertake to abide by the decision of the arbitral tribunal in question.

193. The arbitral awards are usually in writing, signed and dated. Depending upon the rules of procedure adopted by a particular tribunal, certain *compromis* specifically provide that the decision of the tribunal would be adopted by a

---

[157/] See, for example, the Convention for arbitration of questions regarding the Jurisdictional Rights in Bering Sea of 29 February 1892, in Moore, *International Arbitrations*, vol. 5, p. 4762, article 12; the *Compromis* of 16 June 1930 between Honduras and Guatemala, UNIRAA, vol. II, p. 1313, article XIX; and the *Compromis* of 22 January 1963 between the United States and France, ibid., vol. XVI, p. 9, article VIII.

majority vote of its members, 158/ while others also give arbitrators the right to file a separate or dissenting opinion. 159/

194. After an award has been rendered, it may be subject to correction or revision in connection with obvious errors such as clerical, typographical or arithmetical errors especially as suggested in the ILC Model Rules. 160/ An award may also be subject to interpretation. Article 82 of the 1907 Hague Convention provides for a general competence for the arbitral tribunal which rendered the award to interpret it. 161/ Some arbitration agreements have contemplated the possibility of the interpretation of the award. 162/ The *compromis* may also indicate that the award as rendered should be made public on the date agreed by the parties. 163/

195. The last stage of arbitration is the execution of the arbitral award. Depending upon the nature of dispute in question, parties may include in the *compromis* the necessary steps to be taken towards the execution of the award. For example, in a boundary dispute, the parties may agree to establish another commission or appoint experts to designate the boundary once the award is rendered. According to the 1907 Hague Convention, any dispute that may arise between the parties concerning the interpretation or execution of the award shall, in the absence of an agreement to the contrary, be submitted to the arbitral tribunal which pronounced it. 164/

158/ See, e.g., article VI of the 22 January 1963 *Compromis* between the United States and France in the case concerning the Interpretation of their mutual Air Transport Services Agreement, ibid., vol. XVI, p. 9.

159/ See, e.g., article 9 of the 10 July 1975 *Compromis* between the United Kingdom and France in the case concerning the delimitation of the continental shelf, *supra*, note 156, p. 5, at p. 6.

160/ See article 31 of the Model Rules, in *The Work of International Law Commission*, *supra*, note 105, p. 154.

161/ This competence is limited only to an agreement contrary to such review procedure between the parties.

162/ See, for example, the Treaty for Conciliation, Judicial Settlement and Arbitration (with annexes) between the United Kingdom and Switzerland, United Nations, *Treaty Series*, vol. 605, p. 205, article 34. See also the *compromis* of 1963 and 1977 between France and the United States, UNIRAA, vol. XVI, p. 7, and vol. XVIII, p. 3, respectively.

163/ See, e.g., article VI (b) of the France-United States *compromis* cited *supra*, note 158.

164/ See article 82 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, *supra*, note 21.

G. Judicial settlement

1. Main characteristics, legal framework and functions

196. States parties to a dispute may seek a solution by submitting the dispute to a pre-constituted international court or tribunal composed of independent judges whose tasks are to settle claims on the basis of international law and render decisions which are binding upon the parties. This method is generally referred to as judicial settlement, which constitutes one of the means of the peaceful settlement of international disputes set out in Article 33 of the Charter of the United Nations.

197. The first international court of a world-wide scale was the Permanent Court of International Justice, which was created by the Covenant of the League of Nations in 1922. It was succeeded by the International Court of Justice, established in 1946 as a principal organ of the United Nations. Under Article 36 of its Statute, the International Court of Justice has general jurisdiction in "all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." Another international institution for judicial settlement is the International Tribunal for the Law of the Sea, provided for under the 1982 United Nations Convention on the Law of the Sea, 165/ with jurisdiction over law of the sea disputes.

198. Both judicial settlement and arbitration make recourse to an independent judicial body to obtain binding decisions, as pointed out in the previous section. Arbitral tribunals, however, are essentially of an ad hoc nature, and are composed of judges selected on the basis of parity by the parties to a dispute who also determine the procedural rules and the law applicable to the case concerned. International courts and tribunals, by contrast, are pre-constituted inasmuch as they are permanent judicial organs whose composition, jurisdictional competence and procedural rules are predetermined by their constitutive treaties. Furthermore, judicial settlement may be distinguished from arbitration in that the decisions of international courts and tribunals are, as a rule, not appealable. The Statute of the International Court of Justice provides in its Article 60 that "the judgment [of the Court] is final and without appeal". 166/ The only exceptions to the rule concern questions of scope or execution of judgment, which may be subject to further decisions, though of the same court. Thus, Article 60 of the ICJ Statute provides further that "in the event of dispute as to the meaning or scope of the

---

165/ Article 287 (1) (a) and annex VI, article 1 (1). The Tribunal, as well as its Seabed Dispute Chamber, having jurisdiction in disputes with respect to activities in the Area, is to be established upon entry into force of the Convention.

166/ Similar provisions are found in article 52 of the 1950 European Convention for the Protection of Human Rights (United Nations, *Treaty Series*, vol. 213, p. 221), article 67 of the 1969 American Convention on Human Rights (*International Legal Materials*, vol. IX, p. 673) and article 296 of the United Nations Convention on the Law of the Sea (United Nations publication, Sales No. E.83.V.5), p. 101.

judgment, the Court shall construe it upon the request of any party". 167/ The degree of finality of decisions of arbitral tribunals, on the other hand, depends on what is specifically agreed upon in a *compromis*, which may provide for the possibility of decisions being subject to an appeal before international courts. 168/

199. It may also be pointed out that because international courts or tribunals are pre-constituted institutions, they are *ipso facto* better suited than ad hoc arbitral tribunals - which take longer to constitute - to deal with urgent matters such as requests for interim (provisional) measures of protection. 169/ Moreover, owing to the same characteristic as permanent institution, an international court such as the International Court of Justice appears to be better suited for developing uniform jurisprudence of international law than ad hoc arbitral tribunals. Such jurisprudence is developed by the courts while exercising jurisdiction on contentious cases between States, 170/ or advisory jurisdiction on legal questions referred to it by an international organization and relating to disputes between States, between States and international organizations and those between international organizations. 171/ As the principal judicial organ of

---

167/ See, e.g., the Chorzow Factory Case (Germany *v.* Poland), *P.C.I.J. Series A*, No. 13, p. 4, Application for revision and interpretation of the judgment of 24 February 1982 in the case concerning the Continental Shelf (Tunisia *v.* Libya), *I.C.J. Reports 1985*, p. 192, Request for interpretation of the Judgment on the Asylum case of 20 November 1950 (Colombia *v.* Peru), *I.C.J. Reports 1950*, p. 395 (request declared not admissible), Haya de la Torre (Colombia *v.* Peru), *I.C.J. Reports 1951*, p. 71.

168/ See, e.g., Appeal from a judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal (Hungary *v.* Czechoslovakia), *P.C.I.J. Series A/B*, No. 61, p. 208, Société Commerciale de Belgique (Belgium *v.* Greece), *P.C.I.J. Series A/B*, No. 78, p. 160, Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras *v.* Nicaragua), *I.C.J. Reports 1960*, p. 191.

169/ See, e.g., Article 41 of the ICJ Statute and paragraph 5 of article 290 of the Law of the Sea Convention. A substantial number of cases involving interim measures of protection exist. In the case of the International Court of Justice, such cases include: Nuclear Tests (Australia *v.* France), Order re. Interim Measures, *I.C.J. Reports 1973*, p. 135; Fisheries Jurisdiction (United Kingdom *v.* Iceland), Order re. Interim Measures, *I.C.J. Reports 1972*, p. 12; Fisheries Jurisdiction (Federal Republic of Germany *v.* Iceland), Order re. Interim Measures, *I.C.J. Reports 1972*, p. 30.

170/ See para. 200 below.

171/ See, e.g., ICJ advisory opinions on the International Status of South West Africa (*I.C.J. Reports 1950*, p. 128) (dispute between the Union of South Africa and certain members of the United Nations relating to the application of the mandate to South West Africa); Effect of Awards of Compensation made by the United Nations Administrative Tribunal (*I.C.J. Reports 1954*, p. 47); Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West the United Nations, the International Court of Justice has also a quasi-appellate jurisdiction for the decisions of administrative tribunals established within the United Nations system. *172*/ These pre-constituted forums, whether of a regional or world-wide scale, appear also better suited than arbitral tribunals to rule on questions of international law raised in cases before domestic courts, thereby exercising secondary jurisdiction, where such jurisdiction is conferred. *173*/

2. Resort to judicial settlement

200. A brief analysis of both the Permanent Court of International Justice and the International Court of Justice indicates that, of the cases referred to those courts for judicial settlement, many involve questions of interpretation or

---

(continued)

Africa (*I.C.J. Reports 1955*, p. 67); Admissibility of Hearings of Petitioners by the Committee on South West Africa (*I.C.J. Reports 1956*, p. 23); Constitution of the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization (*I.C.J. Reports 1960*, p. 150); Certain Expenses of the United Nations (*I.C.J. Reports 1962*, p. 151); Legal Consequences for States of the Continued Presence of South Africa in Namibia (*I.C.J. Reports 1971*, p. 16); Western Sahara (*I.C.J. Reports 1975*, p. 12); Interpretation of the Agreement of 25 March 1951 between WHO and Egypt (*I.C.J. Reports 1980*, p. 730); Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (*I.C.J. Reports 1988*, p. 12).

172/ See, e.g., ICJ Advisory Opinions on Judgments of the Administrative Tribunal of the International Labour Organisation (ILO) upon complaints made against the United Nations Educational, Scientific and Cultural Organization (UNESCO) (*I.C.J. Reports 1956*, p. 77); Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal (*I.C.J. Reports 1973*, p. 166); Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal (*I.C.J. Reports 1982*, p. 325); Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal (*I.C.J. Reports 1987*, p. 18).

173/ See, e.g., the functions of the Court of Justice of the European Communities under article 177 of the Treaty establishing the European Economic Community of 25 March 1957, *infra*, note 181. Under this provision, the Court may be concerned with questions of interpretation (of the Treaty, of acts of Community institutions and of the statutes of bodies set up by the Council) or with questions of the validity (of acts of Community institutions). See also the functions of the Court of Justice of the Benelux Union under article 6 of the Treaty concerning the Creation and the Statute of a Benelux Court of Justice of 31 March 1965, *infra*, note 182.

application of treaties, 174/ or concern specific problems such as (a) those relating to sovereignty over certain territories and frontier disputes; 175 (b) those concerning maritime delimitations and other law of the sea disputes; 176/ (c) those arising from the law of diplomatic protection of nationals

---

174/ S.S. *Wimbledon* (France, United Kingdom, Italy, Japan *v.* Germany), *P.C.I.J. Series A*, No. 1, p. 15); Treaty of Neuilly (Bulgaria *v.* Greece), *P.C.I.J. Series A*, No. 3, p. 4; Mavrommatis Jerusalem Concessions (Greece *v.* United Kingdom) *P.C.I.J. Series A*, No. 5, p. 6; Certain German interests in Polish Upper Silesia (Germany *v.* Poland), *P.C.I.J. Series A*, No. 7, p. 4; Rights of Minorities in Upper Silesia (Germany *v.* Poland), *P.C.I.J. Series A*, No. 15, p. 4; Chorzow Factory (Germany *v.* Poland), *P.C.I.J. Series A*, No. 17, p. 4; Territorial Jurisdiction of the International Commission of the River Oder (United Kingdom, Czechoslovakia, Denmark, France, Germany, Sweden *v.* Poland) *P.C.I.J. Series A*, No. 23, p. 5; Free Zones of Upper Savoy and the District of Gex (France *v.* Switzerland), *P.C.I.J. Series A/B*, No. 46, p. 96; Interpretation of the Statute of the Memel Territory (United Kingdom, France, Italy, Japan *v.* Lithuania), *P.C.I.J. Series A/B*, No. 49, p. 294; Pajzs, Csaky, Esterházy Case (Hungary *v.* Yugoslavia), *P.C.I.J. Series A/B*, No. 68, p. 30; Diversion of Water from the Meuse (Netherlands *v.* Belgium), *P.C.I.J. Series A/B*, No. 70, p. 4; Asylum Case (Colombia *v.* Peru), *I.C.J. Reports 1950*, p. 266; Rights of Nationals of the USA in Morocco (France *v.* USA), *I.C.J. Reports 1952*, p. 176; Ambatielos (Greece *v.* United Kingdom), *I.C.J. Reports 1953*, p. 10; Application of the Convention of 1902 governing the Guardianship of Infants (Netherlands *v.* Sweden), *I.C.J. Reports 1958*, p. 55; US Diplomatic and Consular Staff in Tehran (USA *v.* Iran), *I.C.J. Reports 1980*, p. 4. Cases which were not decided upon on the merits because the Court declared itself incompetent, but where one of the parties wanted the Court to judge upon the interpretation or application of treaties: Phosphates in Morocco (Italy *v.* France), *P.C.I.J. Series A/B*, No. 74, p. 10; Anglo-Iranian Oil Co. (United Kingdom *v.* Iran), *I.C.J. Reports 1952*, p. 93; Monetary Gold Case (Italy *v.* France, United Kingdom, USA), *I.C.J. Reports 1954*, p. 19; Certain Norwegian Loans (France *v.* Norway), *I.C.J. Reports 1957*, p. 9; Northern Cameroon (Cameroon *v.* United Kingdom), *I.C.J. Reports 1963*, p. 15; South West Africa (Ethiopia *v.* South Africa), *I.C.J. Reports 1966*, p. 6.

175/ Status of Eastern Greenland (Denmark *v.* Norway), *P.C.I.J. Series A/B*, No. 53, p. 22; The Minquiers and Ecrehos (France *v.* United Kingdom), *I.C.J. Reports 1953*, p. 47; Sovereignty over certain frontier land (Belgium *v.* Netherlands), *I.C.J. Reports 1959*, p. 209; Temple of Préah Vihéar (Cambodia *v.* Thailand), *I.C.J. Reports 1961*, p. 6; Frontier dispute (Burkina Faso *v.* Mali), *I.C.J. Reports 1986*, p. 554; Land, Island and Maritime Frontier Dispute (El Salvador *v.* Honduras), pending case (Chamber).

176/ Fisheries (United Kingdom *v.* Norway), *I.C.J. Reports 1951*, p. 116; North Sea Continental Shelf (Federal Republic of Germany *v.* Denmark, Federal Republic of Germany *v.* Netherlands), *I.C.J. Reports 1969*, p. 4; Fisheries Jurisdiction (United Kingdom *v.* Iceland, Federal Republic of Germany *v.* Iceland), *I.C.J. Reports 1974*, pp. 3 and 175; Continental Shelf (Tunisia *v.* Libya), *I.C.J. Reports 1982*, p. 18; Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada *v.* United States of America), *I.C.J. Reports 1984*, p. 246 (Chamber); Continental Shelf abroad; 177/ (d) those arising from circumstances relating to the use of force; 178/ and (e) cases involving enforcement of contracts and violation of certain principles of customary international law. 179/

201. Further examples of the type of cases for which resort to judicial settlement is envisaged are also found in a number of regional treaties which established courts for the settlement of certain disputes. Thus, the European Court of Human Rights and the Inter-American Court of Human Rights, created respectively by the European Convention on Human Rights of 4 November 1950, and the American Convention on Human Rights of 22 November 1969, have jurisdiction in matters relating to human

---

(continued)

(Libya *v*. Malta), *I.C.J. Reports 1985*, p. 13; Aegean Sea Continental Shelf (Greece *v*. Turkey), *I.C.J. Reports 1978*, p. 4 (case not decided upon on the merits because the Court found itself incompetent); Maritime Delimitation in the Area between Greenland and Jan Mayen (pending case).

177/ Oscar Chinn (United Kingdom *v*. Belgium), *P.C.I.J. Series A/B*, No. 63, p. 65; Nottebohm (Liechtenstein *v*. Guatemala), *I.C.J. Reports 1955*, p. 4; Barcelona Traction Light and Power Co. (Belgium *v*. Spain), *I.C.J. Reports 1970*, p. 4 and Eletronica Sicula Spa (United States *v*. Italy) (Chamber). In addition, there were also cases declared inadmissible because of the non-exhaustion of local remedies: Panevezy-Saldutiskis Railway (Estonia *v*. Lithuania), *P.C.I.J. Series A/B*, No. 76, p. 4; Interhandel (Switzerland *v*. United States of America), *I.C.J. Reports 1959*, p. 6.

178/ Corfu Channel Case (United Kingdom *v*. Albania), *I.C.J. Reports 1949*, p. 4; Military and Paramilitary Activities in and against Nicaragua (Nicaragua *v*. United States of America), *I.C.J. Reports 1986*, p. 14; Border and Transborder Armed Actions (Nicaragua *v*. Honduras), *I.C.J. Reports 1988*, p. 69.

179/ S.S. *Lotus* (France *v*. Turkey), *P.C.I.J. Series A*, No. 10, p. 4 - dispute on the question of jurisdiction over an incident aboard a ship on the high seas; Payment of various Serbian loans issued in France (France *v*. United Kingdom of Serbs, Croats and Slovenes), *P.C.I.J. Series A*, No. 20/21, p. 5; Payment in gold of Brazilian Federal loans contracted in France (France v. Brazil), *P.C.I.J. Series A*, No. 20/21, p. 92 - disputes over form of repayment; Lighthouse Case between France and Greece (France *v*. Greece), *P.C.I.J. Series A/B*, No. 71 - succession to a contract concession, Corfu Channel Case (Albania v. United Kingdom), I.C.J. Reports *1949*, p. 244 - assessment of compensation; Right of Passage over Indian Territory (Portugal *v*. India), *I.C.J. Reports 1960*, p. 6 - establishment of the existence of a customary law; Appeal relating to the jurisdiction of the ICAO Council (India *v*. Pakistan), *I.C.J. Reports 1972*, p. 46 - appeal of an ICAO decision.

rights violations in connection with the provisions of these agreements. 180/ In the area of regional economic integration, the Convention of 25 March 1957 relating to Certain Institutions Common to the European Communities 181/ created the Court of Justice of the European Communities to exercise jurisdiction in matters concerning the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community. The Treaty concerning the Creation and the Statute of a Benelux Court of Justice of 31 March 1965 182/ confers upon the Court jurisdiction over questions of interpretation regarding rules of law common to the Benelux countries (e.g., treaty provisions or decisions of the Committee of Ministers) for the purpose of ensuring uniform application of these rules by their national courts or by the Benelux Arbitral College. The Treaty Creating the Court of Justice of the Cartagena Agreement of 28 May 1976 183/ confers upon the Court jurisdiction in matters relating to the interpretation and application of the Agreement of Sub-regional Integration of the Andean Group of 21 May 1969 184/ concluded by five members of the Latin American Free Trade Association (LAFTA). As regards the matter concerning the peaceful use of nuclear energy, the Convention on the Establishment of a Security Control in the Field of Nuclear Energy of 20 December 1957 185/ established the European Nuclear Energy Tribunal before which decisions of the European Nuclear Energy Agency concerning the scope of security controls can be appealed by States parties to the Convention or by affected enterprises. On the question of State immunities, the Additional Protocol to the European Convention on State Immunity of 16 May 1972 186/ created the European Tribunal for the purpose of determining cases concerning alleged breach of the rules of State immunity contained in the Convention.

180/ Cases dealt with by the European Court of Human Rights have been concerned, for example, with (a) physical integrity; (b) prohibition of forced labour; (c) right to liberty and security of person; (d) right to a fair trial; (e) right to respect for private and family life, home and correspondence; (f) freedom of expression; (g) right of peaceful assembly; (h) trade union freedom; (i) right of property; (j) right of education; and (k) right to free elections. Cases dealt with by the Inter-American Court of Human Rights included those referring to: (a) violation of the right to life; (b) violation of personal security through the practice of torture; (c) lack of due process; and (d) arbitrary detention.

181/ *Treaties Establishing the European Communities* (1973).

182/ Mémorial du Grand-Duché de Luxembourg, *Recueil de Législation 1973, II, A*, p. 984.

183/ *International Legal Materials*, vol. XVIII, p. 1203.

184/ Ibid., vol. VIII, p. 910.

185/ Karin Oellers *et al.*, *Disputes Settlement in Public International Law*, p. 620.

186/ *Explanatory Reports on the European Convention on States Immunity and the Additional Protocol*, Council of Europe (1972), pp. 49-65, 67-72.

3. Institutional and procedural aspects

(a) Jurisdiction, competence and initiation of the process

202. Settlement of international disputes by international courts is subject to the recognition by the States concerned of the jurisdiction of the courts over such disputes. 187/ The recognition may be expressed by way of a special agreement between the States parties to a dispute (*compromis*) conferring jurisdiction upon a court in a particular dispute, or by a compromissory clause providing for agreed or unilateral reference of a dispute to a court, or by other means. In the event of a dispute as to whether a court has jurisdiction, the matter is settled by the decision of the court. 188/ For example, the court may rule on questions of competence or other substantive preliminary objections that can be raised by a respondent State, 189/ and also those relating to procedural preliminary objections under the rule of exhaustion of local remedies. 190/

(i) Special agreement

203. Article 36, paragraph 1, of the Statute of the International Court of Justice provides that the "jurisdiction of the Court comprises all cases which the parties refer to it", which is done normally by way of notification to the Registry of a special agreement (*compromis*) concluded by the parties for that purpose. The Special Agreement of 23 May 1976 concerning the Delimitation of the Continental Shelf (Libya/Malta), for example, provides:

> "The Government of the Republic of Malta and the Government of the Libyan Arab Republic agree to recourse to the International Court of Justice as follows:
>
> "Article I,

187/ For cases in which the International Court of Justice found that it could not accept jurisdiction because the opposing party did not recognize its jurisdiction, see *I.C.J. Yearbook 1987-1988*, p. 51, note 1.

188/ ICJ Statute, Article 36, paragraph 6.

189/ Objections to jurisdiction have been taken in the International Court of Justice on several grounds, such as: (a) that the instrument conferring jurisdiction is no longer in force; see, e.g., Temple of Preah Vihear (Cambodia *v.* Thailand), *I.C.J. Reports 1961*, p. 17; or not applicable (e.g., Aerial Incident of 10 March 1953 (United States *v.* Czechoslovakia), *I.C.J. Reports 1956*, p. 6); or the dispute is excluded by virtue of a reservation to the instrument (Military and Paramilitary Activities in and against Nicaragua (Nicaragua *v.* United States), *I.C.J. Reports 1984*, p. 392); or (b) that the dispute is not admissible for reasons of *jus standi* (e.g., South West Africa (Ethiopia *v.* South Africa, Liberia *v.* South Africa), *I.C.J. Reports 1962*, p. 319); or non-exhaustion of local remedies (e.g., Interhandel (Switzerland *v.* United States), *I.C.J. Reports 1957*, p. 105); or non-existence of dispute (e.g., Rights of Passage over Indian territory (Portugal *v.* India), *I.C.J. Reports 1957*, p. 125).

190/ See cases cited in the second sentence of note 177 *supra*.

> "The Court is requested to decide the following questions:
>
> "What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic and how in practice such principles and rules can be applied by the two parties in this particular case in order that they may without difficulty delimit such areas by an agreement ..."

204. By asking the Court to indicate also how, in practice, such principles and rules can be applied in the case, the Libya/Malta *compromis* went further than what had been requested in a special agreement on another delimitation case referred to the Court. In the *North Sea Continental Shelf cases* the special agreement of 2 February 1967 between Denmark and the Federal Republic of Germany, like the special agreement of the same date between the Netherlands and the Federal Republic of Germany, contained the provision set out below, requesting the Court to do no more than to rule on the principles applicable to the delimitation as between the Parties:

> "(1) The International Court of Justice is requested to *decide* the following question: What principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the above-mentioned Convention of 9 June 1965.
>
> "(2) The Governments of the Kingdom of Denmark and of the Federal Republic of Germany shall delimit the continental shelf in the North Sea as between their countries by agreement in pursuance of the decision requested from the International Court of Justice."

(ii) *Compromissory clause in treaties*

205. Article 36, paragraph 1, of the Statute of the Court provides also that the jurisdiction of the Court comprises "all matters specially provided for ... in treaties and conventions in force". There are numerous treaties containing such a compromissory clause, 191/ some of which provide for unilateral reference of all or certain categories of disputes to the International Court of Justice. At the global level, for example, under the General Act for the Pacific Settlement of International Disputes of 26 September 1928 and 28 April 1949 192/ all legal disputes are subject to compulsory adjudication by the Court, unless the parties agree to submit them to arbitration or conciliation. 193/ The Optional Protocol of Signature concerning the Compulsory Settlement of Disputes adopted by the 1958 United Nations Conference on the Law of the Sea 194/ provides that disputes arising

---

191/ A list of such treaties is found in *I.C.J. Yearbook 1987-1988*, pp. 98-114.

192/ The revised General Act was adopted by the General Assembly of the United Nations by its resolution 268 A (III) of 28 April 1949 in order to adapt its provisions to the new international situation.

193/ League of Nations, *Treaty Series*, vol. XCIII, p. 343, articles 1 and 17.

194/ United Nations, *Treaty Series*, vol. 450, p. 170, article 1.

from the interpretation or application of any 1958 Convention on the Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice. The Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes of 18 April 1961 195/ also provides for the jurisdiction of the Court over disputes arising from the interpretation or application of the Convention, unless the parties within a specified period of time agree to submit them to arbitration. Similarly, the Vienna Convention on the Law of Treaties of 23 May 1969 196/ confers jurisdiction upon the Court for disputes concerning the application or interpretation of articles 53 and 64 relating to conflicts of treaties with *jus cogens*, unless they are submitted to an ad hoc arbitration by common agreement of the parties.

206. At the regional level, of special interest is the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, which provides for the submission of all international legal disputes to the International Court of Justice. 197/ Similar provisions are found also in the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948. 198/

(iii) Other means of conferring jurisdiction

207. With respect to the International Court of Justice, States parties to the Statute of the Court have the option of making a declaration under Article 36, paragraph 2, of the Statute by which they accept in advance the jurisdiction of the Court "in all legal disputes concerning (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation". States are bound by this declaration only with respect to States which have also made such a declaration. The declaration may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time. Optional clauses of compulsory jurisdiction also exist with respect to the European Court of Human Rights 199/ and the Inter-American Court of Human Rights. 200/

208. By contrast, other treaties establishing an international court automatically confer jurisdiction to that court with respect to its scope of activities. The States parties do not need and do not have the option to make a declaration of acceptance of the compulsory jurisdiction of that court. Thus, by becoming a party to the Treaties establishing the European Communities, member States automatically subject themselves to the jurisdiction of the Court of Justice of the European Communities for disputes connected with the application and interpretation of the

---

195/ Ibid., vol. 500, p. 95, articles 1 and 2.

196/ Ibid., vol. 1155, p. 331, articles 53 and 64.

197/ Ibid., vol. 320, p. 243, article 1.

198/ Ibid., vol. 30, p. 55, article XXXI.

199/ European Convention on Human Rights of 4 November 1950, article 46.

200/ American Convention on Human Rights of 22 November 1969, article 62.

Treaties. 201/ States parties to the 1982 United Nations Convention on the Law of the Sea *ipso facto* accept the compulsory jurisdiction of various forums for the settlement of law of the sea disputes. 202/ However, under the Convention, States parties have to make a declaration on the choice of the forum for judicial settlement established thereunder. 203/

(iv) Initiation of process

209. Contentious proceedings before international courts are instituted either unilaterally by one of the parties to a dispute or jointly by the parties, depending upon the terms of the relevant agreement in force between them. 204/ Thus, if under the agreement the parties have accepted the compulsory jurisdiction of the International Court of Justice in respect of the dispute, then proceedings may be instituted unilaterally by the applicant State. In the absence of such a prior acceptance, however, proceedings can only be brought before international courts on the basis of the mutual consent of the parties.

210. The procedure for instituting contentious proceedings is defined in the basic statute of the respective international courts. The Statute of the International Court of Justice provides under Article 40 as follows:

> "1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.
>
> "2. The Registrar shall forthwith communicate the application to all concerned.

201/ Treaty Establishing the European Coal and Steel Community of 25 March 1957 (*supra*, note 181), article 33; Treaty Establishing the European Atomic Energy Community of 25 March 1957, United Nations, *Treaty Series*, vol. 298, p. 169, article 142; Treaty Establishing the European Economic Community of 25 March 1957 (*supra*, note 181), article 170.

202/ These forums are: (a) the International Tribunal for the Law of the Sea; (b) the International Court of Justice; (c) an arbitral tribunal constituted under the relevant provisions (Annex VII) of the 1982 Convention; (d) a special arbitral tribunal constituted under the relevant provisions (Annex VIII) of the 1982 Convention.

203/ Articles 286 and 287.

204/ In some regional courts, cases may be brought to them by entities other than States (e.g., the European Commission of Human Rights with respect to the European Court of Human Rights; the Council or the Commission with respect to the Court of Justice of the European Communities; the Inter-American Commission on Human Rights with respect to the Inter-American Court of Human Rights) or even by individuals (e.g., the Court of Justice of the European Communities). However, as far as disputes between States are concerned, access to the court is generally confined to the States concerned.

> "3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other States entitled to appear before the Court."

211. A special agreement may be concluded ad hoc, after the dispute has arisen, or it may be reached in accordance with provisions relating to the settlement of disputes in existing international treaties in force between the parties. 205/ In filing an application the parties may request, in accordance with the terms of the relevant agreement, that the case be brought to a special or ad hoc chamber consisting of a limited number of the members of the court concerned. 206/ Examples of these include the chamber of summary procedure 207/ and ad hoc chambers 208/ of the International Court of Justice and the Sea-Bed Disputes Chamber 209/ and special chambers 210/ of the International Tribunal for the Law of the Sea. Resort to an ad hoc chamber of the International Court of Justice is a fairly recent phenomenon, as the provisions of Article 26, paragraph 2, of the Statute of the Court were not invoked until 1981. 211/ Since then, however, three out of eight contentious cases have been referred to ad hoc chambers. 212/

(v) *Advisory opinions*

212. International courts may be empowered to give an advisory opinion on a legal question relating to an existing international dispute between States referred to

---

205/ An example of special agreements concluded on the basis of a compromissory clause in existing international treaties is the Special Agreement concerning the *North Sea Continental Shelf* cases, the preamble of which reads, *inter alia*:

> "Bearing in mind the obligation assumed by [the parties] under Articles 1 and 28 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 to submit to the judgment of the International Court all international controversies to the extent that no special arrangement has been or will be made ..."

206/ See para. 217 below.

207/ ICJ Statute, Article 29.

208/ Ibid., Article 26, paragraph 2.

209/ 1982 United Nations Convention on the Law of the Sea, article 187.

210/ Ibid., article 188.

211/ The delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States) was referred to an ad hoc chamber in November 1981 and an ad hoc chamber was established in January 1982. *I.C.J. Reports 1984*, p. 246.

212/ Frontier Dispute (Burkina Faso/Republic of Mali), *I.C.J. Reports 1986*, p. 554; Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), *I.C.J. Reports 1987*, p. 10; Electronica Sicula Spa (ELSI) (United States of America *v.* Italy), *I.C.J. Reports 1987*, p. 3.

them by an international entity. 213/ The opinion does not bind the requesting entity, or any other body, or any State. Nevertheless, procedure in advisory cases, as in contentious cases, involves elaborate written and oral proceedings in accordance with the predetermined rules of the court in question, and as such advisory opinions could assume the character of judicial pronouncements which, while not binding, might entail practical consequences for the bodies concerned.

(b) Access and third-party intervention

213. A State not party to a legal instrument establishing an international court is normally denied access to it. In the case of the International Court of Justice, however, States not party to the Charter of the United Nations may, by virtue of Article 93, paragraph 2, of the Charter become a party to the Statute of the Court on conditions to be determined by the General Assembly upon the recommendation of the Security Council. The Statute of the Court further provides under its Article 35, paragraph 2, that other States may have access to the Court in compliance with the conditions laid down by the Security Council and subject to the special provisions contained in treaties in force. 214/

214. A third State may submit a request to be permitted to intervene in the proceedings if it considers that it has an interest of a legal nature which may be affected by the decision in the case. 215/ Provisions for such proceedings are

---

213/ E.g., Permanent Court of International Justice (Covenant of the League of Nations: article 14); International Court of Justice (Charter of the United Nations, Article 96; Statute of the Court, Article 65); European Court of Human Rights (Protocol No. 2 to the European Convention on Human Rights). In the case of the International Court of Justice, the General Assembly has requested 13 advisory opinions of the Court, some of which were related to existing disputes between States, for example: International Status of South West Africa (1949) (a dispute between the Union of South Africa and certain members of the United Nations relating to its application of the mandate to South West Africa); Western Sahara (1975). The Security Council also requested an advisory opinion of the Court concerning the legal consequences for States of the continuing presence of South Africa in Namibia notwithstanding Security Council resolution 276 (1970) of 30 January 1970. The Economic and Social Council also requested an advisory opinion of the Court concerning the question of the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dumitru Mazilu as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. ICJ gave its advisory opinion on the question on 15 December 1989 (see E/1990/15/Add.1 and *I.C.J. Reports 1989*, p. 177).

214/ For the list of the States entitled to appear before the Court, see *I.C.J. Yearbook 1987-1988*, pp. 44-51.

215/ Permission to intervene was requested, for example, by Malta in *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* and by Italy in *Continental Shelf (Malta/Libyan Arab Jamahiriya)*. In both cases, the requests were not accepted by the Court: *I.C.J. Reports 1981*, p. 3; *I.C.J. Reports 1984*, p. 3.

found in the respective statutes and rules of international courts or tribunals, such as the International Court of Justice, 216/ the International Tribunal for the Law of the Sea 217/ and the Court of Justice of the European Communities. 218/

(c) Composition

215. In the various multilateral treaties establishing international courts, provisions are made for the composition of the court in question and the selection of judges. The size of the actual body varies in accordance with the terms of each instrument - for example, from 21 members constituting the International Tribunal for the Law of the Sea, to 15 members in the case of the International Court of Justice, to 9 members in respect of the Benelux Court of Justice. 219/ In the case of the Court of Justice of the European Communities, each Member State of the European Communities is attributed a seat on the bench, whereas both the International Court of Justice and the International Tribunal for the Law of the Sea are composed of "independent judges, elected regardless of their nationality" which as a whole should represent "the main forms of civilization and of the principal legal systems of the world". 220/ The composition of all other international courts is based on either of these two basic alternatives.

216. The selection procedure is generally provided in the statute of the court concerned. The judges may be appointed by common agreement of member States, as provided for the Court of Justice of the European Communities, 221/ or elected by one or more political organs, e.g., the General Assembly and the Security Council of the United Nations in the case of the International Court of Justice, 222/ or the Consultative Assembly of the Council of Europe for the European Court of Human Rights. 223/ In addition, a party to a dispute may appoint an ad hoc judge of its nationality if the court concerned does not include upon the bench a judge of that

---

216/ Statute of the International Court of Justice, Article 63, Rules of the International Court of Justice, Articles 81-86.

217/ 1982 United Nations Convention on the Law of the Sea, Annex VI, articles 31 and 32.

218/ Rules of Procedure of the Court of Justice of 1982, Official Journal C39/2, 15.2, 1982, article 93.

219/ Statute of the International Tribunal for the Law of the Sea (Convention, Annex VI), article 2; ICJ Statute, Article 3; Treaty concerning the Creation and the Statute of a Benelux Court of Justice of 31 March 1965, article 3.

220/ ICJ Statute, Articles 2 and 9; Statute of the International Tribunal for the Law of the Sea, article 2 (2).

221/ Treaty establishing the European Economic Community (with annexes and Protocols), done at Rome on 25 March 1957, United Nations, Treaty Series, vol. 298, p. 2, article 167.

222/ ICJ Statute, article 4.

223/ European Convention on Human Rights of 4 November 1950, article 39 (1).

nationality. 224/ The judges are selected in their individual capacities strictly on the basis of legal qualifications. The terms of the judges are, for example, nine years as regards the International Court of Justice, with one third of the bench elected every three years. 225/ No more than one national of any State may be a member of the Court. 226/

217. The composition of an international court and the selection of its judges thus are not, except for ad hoc judges, dependent upon the wishes of the parties to a dispute. Possibilities exist, however, for the views of the litigant States to be reflected in this matter with respect to the disputes concerning sea-bed activities in the Area. The 1982 United Nations Convention on the Law of the Sea provides in its Annex VI, article 15, paragraph 2, that such disputes may be submitted to a special chamber of the International Tribunal for the Law of the Sea to be established at the request of the parties, the composition of which is to be determined by the Tribunal with the approval of the parties. In the case of an ad hoc chamber of the International Court of Justice constituted under Article 26, paragraph 2, of the Statute of the Court, while the number of the judges of the chamber is determined with the approval of the parties, the selection itself is left to the decision of the Court. 227/ However, the parties to a dispute, by way of special agreement, may request to be consulted on the selection. Furthermore, judges of the nationality of each of the parties may, under Article 31 of the Statute, retain their right to sit in the case before the Court or the chamber. 228/ Article I of the Special Agreement of 29 March 1979 229/ concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area thus stipulated as follows:

> "1. The Parties shall submit the question posed in Article II to a Chamber of the International Court of Justice constituted pursuant to Article 26 (2) and Article 31 of the Statute of the Court and in accordance with this Special Agreement.

224/ See, e.g., the ICJ Statute, Article 31; the Statute of the International Tribunal for the Law of the Sea (Convention, Annex VI), article 17; the 1950 European Convention on Human Rights, article 43; and the Statute of the Inter-American Court of Human Rights, article 10.

225/ ICJ Statute, Article 13, paragraph 1.

226/ Ibid., Article 3.

227/ ICJ Rules, Article 17, paragraph 3.

228/ See also the 1950 European Convention on Human Rights, article 43.

229/ Special Agreement of 29 March 1979, Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States), Exec. Doc. U. 96th Cong., 1st Session (1979).

> "2. The chamber shall be composed of five persons, three of whom shall be elected by and from the Members of the Court, after consultation with the Parties, and two of whom shall be judges ad hoc, who shall not be nationals of either Party, chosen by the Parties." 230/

(d) Rules of procedure

218. Rules of procedure governing the proceedings for the judicial settlement of international disputes are found in the basic statute of the international court or tribunal concerned, and by the supplementary rules adopted by it, which determine such technical requirements as the official languages, the structure and phases of the proceedings and the contents and delivery of the decision. The official languages of the International Court of Justice are English and French. 231/ All communications and documents relating to cases submitted to the Court are channelled through the Registrar. 232/

219. In contentious cases, the party at the time of filing a document instituting proceedings informs the competent court of the name of the agent who will be its representative in the proceedings; the other party then appoints its agent as soon as possible. 233/ The proceedings in contentious cases are usually divided into a written and an oral phase. The written phase normally comprises the filing of pleadings with a time-limit fixed by the court, the pleadings are generally confined to a statement of the case (memorial) and a defence (counter-memorial) and, if necessary, a reply and a rejoinder, 234/ together with papers and documents in support. 235/ Depending upon the procedure agreed upon by the parties or regulated by the rules of the court, these pleadings may be filed simultaneously by both parties or alternatively, each party replying to the other. 236/ The number and the order of filing of the pleadings are determined in the orders of the court 237/ or on the basis of a special agreement. Written pleadings should contain a full statement of the facts considered relevant by the party and of its arguments as to the law. 238/

230/ In the *Gulf of Maine* case, a Canadian judge ad hoc was appointed, since Canada did not have a national on the bench of the International Court of Justice.

231/ ICJ Statute, Article 39.

232/ ICJ Rules, Article 26, paragraph 1 (a).

233/ ICJ Statute, Article 42; ICJ Rules, Article 40.

234/ ICJ Rules, Article 45.

235/ Ibid., Article 50.

236/ In the recent practice of special agreements, simultaneous submission is a preferred method as it alleviates the question of which party should bear the burden of proof or of which party should be given the last word.

237/ ICJ Rules, Article 44, paragraph 1.

238/ Ibid., Article 49.

220. The oral phase begins at the closure of the written proceedings. In principle, oral proceedings are held in public, unless it is otherwise decided under specific circumstances.[239] The parties may address the court only through their agents, counsel or advocates. In the course of the oral proceedings, witnesses and experts may be called upon by the parties or by the court to give evidence or clarify any aspects of the matters in issue. If a party fails to appear before the court in the oral proceedings or fails to defend its case, the opposing party may request a decision in favour of its final claims.[240] In the Statute of the International Tribunal for the Law of the Sea, the opposing party may request the Tribunal only to continue the proceedings and to make its decision.[241]

221. Subsequent to the closure of the oral proceedings, the court examines the factual and legal foundations of the claim. Specific instructions as to the applicable law are contained in its statute or in a special agreement for the claim. Because of the nature of international disputes, the primary source of law is to be found in international law. Article 38, paragraph 1, of the Statute of the International Court of Justice provides:

> "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
>
> b. international custom, as evidence of a general practice accepted as law;
>
> c. the general principles of law recognized by civilized nations;
>
> d. ... judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

---

[239] ICJ Statute, Article 46; Revised Rules of Court of the European Court of Human Rights of 24 November 1982, article 18; Rules of Procedure of the Inter-American Court of Human Rights of 1980, article 14 (1).

[240] ICJ Statute, Article 53. In practice, however, a number of judgments and orders were delivered in the absence of one of the parties: Corfu Channel; Anglo-Iranian Oil Co.; Nottebohm; Fisheries Jurisdiction (United Kingdom v. Iceland) (Federal Republic of Germany v. Iceland); Nuclear Tests (Australia v. France) (New Zealand v. France); United States Diplomatic and Consular Staff in Tehran; and Military and Paramilitary Activities in and against Nicaragua.

[241] 1982 United Nations Convention on the Law of the Sea, Annex VI, article 28.

However, the deciding of the case according to other legal norms or on the basis of *ex aequo et bono* is not precluded, if the parties agree to such a solution. 242/ The deliberations of the court are kept private and secret. 243/

222. The rules governing the procedure for reaching a decision are fixed by the court. Its decision is made by a majority of the votes of the judges present, with a casting vote to be given by the president or by the judge acting in his place, in the event of equality of votes for and against. 244/ The decision should state the reasons on which it is based and should be framed within the scope of the claims made by the parties. A judge whose views on the matter differ either in whole or in part may deliver an individual opinion along with the judgement, which could be expressed in the form of a "separate opinion", if disagreement of the judge is concerned with the reasons on which a judgement is based, or in the form of a "dissenting opinion", if disagreement is with the holding in the judgement itself.

223. As regards advisory proceedings, the rules governing the procedure of contentious proceedings generally apply, 245/ subject to special rules provided for them. 246/

224. The basic statutes and procedural rules of international courts or tribunals do not provide for any specific duration within which a case should be decided, though certain dates and time-limits are determined as orders by the court seized with the case with regard to the filing of pleadings, the submission by the parties of memorials, counter-memorials and, as the case may be, replies as well as the papers and documents in support, and the time in which each party must conclude its arguments.

(e) Seat and administrative aspects

225. The seat of international courts and tribunals is established in accordance with their basic statutes and procedural rules. In the case of the International Court of Justice, its seat is established at The Hague. This, however, does not prevent the Court from acting and exercising its functions elsewhere whenever the Court considers it desirable to do so. 247/

242/ ICJ Statute, Article 38, paragraph 2.

243/ Ibid., Article 54, paragraph 3.

244/ Ibid., Article 55.

245/ Ibid., Article 68.

246/ Ibid., Articles 65-67; ICJ Rules, Articles 102-109. Rules of the Court of Justice of the European Communities, articles 107-109.

247/ ICJ Statute, Article 22, paragraph 1; ICJ Rules, Article 55.

226. The judges comprising international courts or tribunals elect from their members a president, 248/ a vice-president 249/ and presidents of chambers 250/ for a specified term of office. The president directs the judicial business and the administration of the court and presides at all meetings of the court. 251/

227. The administrative functions of international courts are carried out by a secretariat established for this purpose generally known as the registry. 252/ The executive head of the registry, the registrar, is appointed by the competent court for a specified term of office, e.g., seven years in the case of the International Court of Justice. 253/ The functions of the registrar are defined by the rules of court, 254/ which include, as its main function relating to cases before the court, the execution of all communications, notifications and transmission of documents to the court and to the disputants.

(f) Expenses and other financial arrangements

228. The basic statutes and procedural rules of international courts or tribunals determine the means for covering the expenses involved in the settling of claims. In principle, the expenses of the functioning of these courts or tribunals are borne by their member States on a regular basis. It is thus provided that the expenses of the International Court of Justice, including amounts payable to witnesses or experts appearing at the insistence of the Court, are borne out of the United Nations budget. 255/ If a party to a case does not contribute to the United Nations budget, the Court itself fixes the amount payable by that party as a contribution towards the expenses of the Court for the case. Each party bears its own costs of the preparation and presentation of its claims, such as counsels'

248/ ICJ Statute, Article 21, paragraph 1; 1950 European Convention on Human Rights, article 41; 1982 Rules of Procedure of the Court of Justice of the European Communities, article 7.

249/ ICJ Statute, Article 21, paragraph 1; 1950 European Convention on Human Rights, article 41.

250/ 1982 Rules of Procedure of the Court of Justice of the European Communities, article 10.

251/ ICJ Rules, Article 12; 1982 Rules of Procedure of the Court of Justice of the European Communities, article 8.

252/ ICJ Rules, Articles 22-24; 1982 Revised Rules of Procedure of the European Court of Human Rights, rules 11-14; 1982 Rules of the Court of Justice of the European Communities, articles 12-23.

253/ ICJ Statute, Article 22.

254/ ICJ Rules, Article 26; 1982 Revised Rules of Procedure of the European Court of Human Rights, rule 14; 1982 Rules of the Court of Justice of the European Communities, articles 17-19.

255/ ICJ Statute, Article 33.

fees, printing costs or travel expenses, 256/ unless the Court makes an order in favour of a party for the payment of the costs by the other party 257/ or unless a party qualifies to receive financial assistance from the Trust Fund established by the Secretary-General of the United Nations in 1989, to assist States in the settlement of disputes through the International Court of Justice.

4. Outcome of judicial settlement

229. The outcomes of contentious proceedings involving international disputes are decisions which are final and binding on the parties. In a majority of cases, the judgements are those requiring performance, but as has been done in some of the judgments of the International Court of Justice, a court may be requested to render declaratory judgements in which the court determines the guiding legal principles to be followed in dealing with a particular dispute, without giving a definitive decision on the dispute, 258/ or establishes that the violation of the principle of international law in question has no practical remedy. 259/ The judgements pertaining to interim proceedings, such as those for provisional measures of protection, preliminary rulings or objections, and intervention by a third-party State, are also binding upon the parties.

H. Resort to regional agencies or arrangements

1. Main characteristics, legal framework and relation to other means of peaceful settlement provided for by Article 33 of the Charter of the United Nations

230. Article 33 of the Charter of the United Nations mentions "resort to regional agencies or arrangements" among the peaceful means by which States parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution to the dispute.

231. Further to their being mentioned in Article 33 of the Charter of the United Nations, regional agencies or arrangements are dealt with in Chapter VIII of the Charter, and, more specifically, as regards peaceful settlement of disputes, in Article 52 thereof.

232. Article 52 refers both to "regional arrangements" or "regional agencies". The term "regional arrangements" denotes agreements (regional multilateral treaties) under which States of a region undertake to regulate their relations with respect to the question of the settlement of disputes, without creating thereunder a permanent institution or a regional international organization with international

---

256/ Ibid., Article 64.

257/ ICJ Rules, Article 97.

258/ See paragraph 204 above.

259/ See, e.g., the Corfu Channel case, *supra*, note 178.

legal personality. 260/ The term "regional agencies", by contrast, refers to regional international organizations created by regional multilateral treaties under a permanent institution with international legal personality to perform broader functions in the field of the maintenance of peace and security, including the settlement of disputes. 261/

233. The words "regional agencies or arrangements" may also be applied, in an extensive manner, to agreements of a more specific subject-matter, namely, systems created by some regions of the world for the development of some very specific areas of international law such as the protection of human rights, 262/ economic integration 263/ and shared resources management. 264/ These regional agreements may provide for specific means of peaceful settlement of disputes arising between States parties to those agreements, disputes which concern the interpretation and/or application of, or compliance with their provisions.

234. Regional agencies or arrangements deal with most of the means of peaceful settlement of disputes under Article 33 of the Charter of the United Nations and provide for the technical aspects of the resort to such means.

260/ See, e.g., the 1957 European Convention for the Peaceful Settlement of Disputes, United Nations, Treaty Series, vol. 320, p. 243, and the 1948 American Treaty on Pacific Settlement (the Pact of Bogotá), ibid., vol. 30, p. 55, at p. 84.

261/ See, e.g., the League of Arab States created under the Pact, signed at Cairo on 22 March 1945, United Nations, Treaty Series, vol. 70, p. 237; the Organization of American States (OAS) established under the Charter, signed at Bogotá on 30 April 1948 (the Bogotá Charter), ibid., vol. 119, p. 3, as amended by the Protocol of Buenos Aires, signed on 27 February 1967, ibid., vol. 721, p. 264, at p. 324 and by the Protocol of Cartagena de Indias signed on 5 December 1985, O.A.S. Treaty Series, No. 66; the Organization of African Unity (OAU), established under the Charter, signed at Addis Ababa on 25 May 1963, United Nations, Treaty Series, vol. 479, p. 39; and the Council of Europe, established under the treaty, signed at London on 5 May 1949, ibid., vol. 87, p. 103.

262/ See, e.g., the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, ibid., vol. 213, p. 221; the 1969 American Convention on Human Rights (Pact of San José), ibid., vol. 1144, p. 123; and the 1981 African Charter on Human and Peoples' Rights, OAU document CAB/LEG/67/3/Rev.5.

263/ See, e.g., the European Coal and Steel Community, created under the treaty, signed at Paris on 18 April 1951, United Nations, Treaty Series, vol. 261, p. 140; the European Atomic Energy Community (EURATOM), created under the treaty, signed at Rome on 25 March 1957, ibid., vol. 294, p. 261; the European Economic Community, created under the treaty, signed at Rome on 25 March 1957, ibid., vol. 294, p. 3; and the Economic Community of West African States (ECOWAS), created under the treaty, signed at Lagos on 28 May 1975, ibid., vol. 1010, p. 17.

264/ See, e.g., the 1963 Act regarding Navigation and Economic Co-operation between the States of the Niger Basin, ibid., vol. 587, p. 9; the Protocol concerning the Establishment of an International Commission to Protect the Moselle against Pollution, signed at Paris on 20 December 1961, ibid., vol. 940, p. 211, and the 1959 Agreement concerning the regulation of Lake Inari, ibid., vol. 346, p. 167.

235. Those regional agencies aimed at performing wide functions in the field of the maintenance of international peace and security 265/ have their own mechanisms for the peaceful settlement of disputes, either by reference to negotiation, inquiry, mediation, conciliation, judicial settlement and arbitration or by endowing permanent organs with specific functions for this purpose. 266/

236. As far as regional agencies devoted to performing functions in specific areas are concerned, 267/ it should be mentioned that their constituent instruments also include provisions concerning the peaceful settlement of disputes arising in connection with the interpretation or application of their provisions. Moreover, some of these regional agencies, particularly those created for the protection of human rights 268/ and those intended to achieve economic integration, 269/ have set up bodies of third-party settlement, such as judicial tribunals.

237. The inclusion of resort to regional agencies or arrangements among the means of peaceful settlement of disputes under Article 33 of the Charter of the United Nations was to give the Member States the option to apply any of the enumerated peaceful means in a regional setting or forum. Thus, the settlement of disputes through regional agencies or arrangements relies upon the free choice of those specific means (negotiation, inquiry, good offices, mediation, conciliation, arbitration and judicial settlement) by the parties to a local dispute, invoking first the settlement procedures as established under the regional instrument in question, as envisaged in Article 52 of the Charter.

2. Institutional arrangements, competence and procedure

238. Paragraphs 239-271, below provide examples and a brief description of procedures involved in the peaceful settlement of disputes in various regional arrangements or agencies, particularly as regards the competence of the organs concerned and the initiation of process. Section 3 which follows, on the other hand, concentrates on some examples of dispute settlement in which various regional arrangements or agencies have been involved. To the extent that some institutional aspects contained in the present section may be illustrated by means of the examples of dispute settlement described in section 3, the appropriate cross-references are also made.

265/ See *supra*, note 261.

266/ See article 5 of the Pact of the League of Arab States, article 23 of the OAS Charter and article XIX of the OAU Charter, all referred to in note 261 *supra*.

267/ See *supra*, notes 262, 263 and 264.

268/ See article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms and article 33 of the American Convention on Human Rights (Pact of San José), both referred to in note 262.

269/ See, e.g., article 3 of the 1957 Convention relating to certain institutions common to the European Communities, signed at Rome on 25 March 1957, United Nations, *Treaty Series*, vol. 294, p. 411.

(a) League of Arab States

239. Article 5 of the League Pact provides for an arbitral role for the Council of the League, which is composed of representatives of all member States. 270/ If a dispute between two contending members of the League does not involve the independence, sovereignty or territorial integrity of a State and those members apply to the League Council for the settlement of their dispute, the decisions of the League Council shall be effective and obligatory. 271/ The exercise of the Council's functions as an organ of arbitration is therefore subject to two conditions: (a) party submission and (b) subject-matter limitations. When the Council acts in its arbitral capacity, the States among whom the dispute has arisen shall not participate in the deliberations and decisions of the Council. 272/ The League Pact also provides that the Council shall mediate, in a dispute which may lead to war between two member States or between a member State and another State, in order to conciliate them. 273/ The exercise of these functions of good offices, mediation and conciliation does not depend upon the submission of the dispute by the parties.

240. In practice, the Council has applied the modes of good offices, mediation and conciliation to all disputes, whether peace threatening or not. While in some cases it has done so directly, in other cases it has set up subsidiary bodies to carry out these functions. 274/

241. It is also to be noted that while the Pact of the League does not expressly provide for the participation of its Secretary-General in the process of the peaceful settlement of disputes, the Council, through internal regulations, has developed an active role for the Secretary-General in this connection. Often the Council has included the Secretary-General of the League in the special bodies it has created for its mediation and fact-finding missions. 275/

(b) Organization of American States

242. Chapter VI (arts. 23 to 26) of the OAS Charter deals specifically with the peaceful settlement of disputes. Article 23, as amended by the 1985 Protocol of Cartagena de Indias, provides that international disputes which may arise between American States shall be submitted to the peaceful procedures set forth in the OAS Charter, although that should not be interpreted as an impairment of the rights and obligations of the member States under articles 34 and 35 of the Charter of the

---

270/ Pact of the League, article 3; see note 261 *supra*.

271/ Ibid., article 5, first paragraph.

272/ Ibid., second paragraph.

273/ Ibid., article 5 (3). It is to be noted that while the English version speaks of "mediate ... in order to conciliate", the French version speaks of "prêter ses bons offices"; United Nations, *Treaty Series*, vol. 70, at p. 255.

274/ See paragraphs 274-276 below.

275/ See paragraphs 275 and 276 below.

United Nations. Specific mention is made in the Bogotá Charter of direct negotiation, good offices, mediation, investigation and conciliation, judicial settlement and arbitration as well as other means of the choice of the parties to the dispute. Article 26 contains an express reference to a special treaty establishing adequate procedures for the peaceful settlement of disputes and the means for their application. This is the American Treaty on Pacific Settlement ("Pact of Bogotá") of 30 April 1948, which contains a detailed provision of the above-mentioned procedures in addition to certain general principles regarding the peaceful settlement of disputes between American States. 276/

243. It is also to be noted that, as amended in 1970, and again in 1985, the OAS Charter endows the Permanent Council of the organization, composed of one representative of each member State, with functions in the field of peaceful settlement. 277/ The exercise of these functions may be initiated by any party to a dispute in which none of the peaceful procedures provided for in the OAS Charter is under way. If any or all of the parties to a dispute request the good offices of the Council the latter shall assist the parties and recommend the procedures it considers suitable for the peaceful settlement of the dispute. In the exercise of these functions the Council, with the consent of the Governments concerned, may resort to fact-finding activities in the territory of one or more parties to the dispute. It also may, with the consent of the parties to the dispute, establish ad hoc committees with a membership and mandate also to be agreed to by the parties. 278/

244. Furthermore, article 87 of the OAS Charter, as amended in 1985, provides that if the procedure for the peaceful settlement of disputes recommended by the Permanent Council or suggested by the pertinent ad hoc committee under the terms of its mandate is not accepted by one of the parties, or one of the parties declares that the procedure has not settled the dispute, the Permanent Council shall so inform the General Assembly, without prejudice to its taking steps to secure agreement between the parties or to restore relations between them.

245. As for the role of the OAS Secretary-General himself, the adoption in 1985 of the Protocol of Amendment to the OAS Charter which gives him powers similar to those conferred on the Secretary-General of the United Nations by Article 99 of the Charter of the United Nations 279/ seems to have paved the way towards the expansion of his powers in the area of peaceful settlement. 280/

276/ See articles 24 and 26 of the OAS Charter as well as notes 34 and 260 above. See also paragraph 277 below on the application of the Pact of Bogotá.

277/ Articles 82 to 90 of the OAS Charter. See also paragraph 273 below for an example of Council involvement in peaceful settlement.

278/ For an example of such ad hoc committees, see paragraph 273 below.

279/ Cf. the Protocol of Cartagena de Indias, article 116; see note 261 supra.

280/ See paragraphs 273-276 below.

(c) Organization of African Unity

246. Article XIX of the OAU Charter lays down the principle of peaceful settlement of disputes and provides for the establishment of a commission of mediation, conciliation and arbitration, whose composition and conditions of service shall be defined by a separate protocol to be regarded as an integral part of the Charter. The said Protocol was signed at Cairo on 21 July 1964 and contains detailed provisions on the establishment and organization of the Commission, on general principles and on the procedures to be followed in cases of mediation, conciliation and arbitration. 281/

247. A dispute may be referred to the Commission jointly by the parties concerned, by a party to the dispute, by the Council of Ministers or by the Assembly of Heads of State and Government. 282/ If a dispute has been referred to the Commission and one or more of the parties have refused to submit to the jurisdiction of the Commission, the Bureau refers the matter to the Council of Ministers for consideration. On the other hand, the consent of the party may be expressed by a prior agreement, by an ad hoc submission of the dispute or by the acceptance of the other party's or the Council's or Assembly's submission of the dispute to the Commission's jurisdiction. The Commission is endowed with powers of investigation or inquiry with regard to disputes submitted to it. 283/

248. In accordance with the Protocol, the parties to a dispute may agree to resort to any one of the following modes of settlement: mediation, conciliation or arbitration. 284/ These three modes are alternative - and not necessarily successive - procedures, and parties are free to use any one or all three in respect of a dispute.

249. In 1977, the Assembly of Heads of State and Government of the Organization of African Unity, with a view to rendering the Commission more flexible and more apt to respond to the urgencies of intra-African disputes, decided to suspend the election of the Commission's members and provisionally appoint an ad hoc Committee composed of nine States plus three other possible members to be appointed by the OAU Chairman. 285/

250. While the possibility always exists for OAU to reactivate the Commission or the ad hoc Committee discussed above, in practice OAU has had recourse to other procedures in a number of peaceful settlement of disputes issues in which it has

---

281/ The Commission consists of 21 members of different nationalities elected by the Assembly of Heads of States and Government for a period of five years. For text of the 1964 Cairo Protocol, see International Legal Materials, vol. III (1964), p. 1116.

282/ 1964 Protocol, article XIII.

283/ Ibid., articles XIV and XVIII.

284/ Ibid., article XIX.

285/ See Dispute Settlement in Public International Law: texts and materials, compiled by Karin Oellers-Frahm and Norbert Wühler (Berlin/Heidelberg/New York, Springer-Verlag, 1984), pp. 150-151 and 156-157.

been involved. It has done so through the Council of Ministers and the Assembly of Heads of State and Government and through the creation of special or ad hoc committees other than the one mentioned in paragraph 249 above. It has also used the good offices of some African statesmen. 286/

(d) European Convention for the Peaceful Settlement of Disputes (Council of Europe)

251. The 1957 European Convention for the Peaceful Settlement of Disputes 287/ is based on the distinction between legal disputes, as defined in Article 36, paragraph 2, of the Statute of the International Court of Justice and other (non-legal) disputes. With regard to legal disputes, the parties to the Convention undertake to accept the compulsory jurisdiction of the International Court of Justice. 288/ This notwithstanding, the parties to a legal dispute may agree to resort to the procedure of conciliation before submitting the dispute to the International Court of Justice. 289/

252. With regard to non-legal disputes (i.e., disputes other than those enumerated in article 36, paragraph 2, of the ICJ Statute), the following means of settlement are provided by the European Convention: (a) conciliation, unless the parties to such a dispute agree to submit it to an arbitral tribunal without prior recourse to conciliation; 290/ and (b) arbitration, for all non-legal disputes which have not been settled by conciliation either because the parties have agreed not to have prior recourse to it or because conciliation has failed. 291/

253. While it is not possible, under the terms of the Convention, for a party thereto not to accept the compulsory jurisdiction of the International Court of Justice with regard to legal disputes, the Convention permits that on depositing its instrument of ratification a party may declare that it will not be bound by the provisions concerning arbitration or those concerning both arbitration and conciliation. 292/ Some States have chosen to submit such reservations.

254. Furthermore, if the parties to a dispute agree to submit a dispute to another procedure of peaceful settlement, the provisions of the Convention do not apply. The only restriction in this connection is that in respect of legal disputes the

---

286/ See also paragraphs 278 and 279 below.

287/ See note 260, *supra*.

288/ European Convention on Peaceful Settlement of Disputes (*supra*, note 260), article 1.

289/ Ibid., article 2 (2).

290/ Ibid., article 4.

291/ Ibid., article 19.

292/ Ibid., article 34.

parties shall refrain from invoking, as between themselves, agreements which do not provide for a procedure entailing binding decisions. 293/

(e) Conference on Security and Cooperation in Europe (CSCE)

255. In accordance with provisions contained in the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe (CSCE), 294/ and subsequent relevant documents, such as the 1990 Charter of Paris for a New Europe 295/ and the 1991 Valleta Report of the CSCE Meeting of Experts on Peaceful Settlement of Disputes, 296/ participating States will endeavour to reach a peaceful, rapid and equitable solution of disputes among them, on the basis of international law, by means such as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice, including any settlement procedure agreed to in advance of disputes to which they are parties. 297/

256. If the parties are unable, within a reasonable period of time, to settle the dispute by direct consultation or negotiation, or to agree upon an appropriate procedure, any party to the dispute may request the establishment of a CSCE Dispute Settlement Mechanism by notifying the other party or parties to the dispute. 298/ The parties to the dispute have a large measure of participation in the selection of members of the Mechanism, enjoying the right to reject several proposed members. However, the relevant provisions also ensure that individual rejections by parties to the dispute or the failure by any party to make a pronouncement on the nominations shall not prevent in the end the establishment of a Mechanism. 299/

257. Once established, the Mechanism will seek such information and comments from the parties, as will enable it to assist the parties in identifying suitable procedures for the settlement of the dispute. The Mechanism may offer general or specific comments or advice relating to the inception or resumption of a process of negotiation among the parties, or to the adoption of any other dispute settlement procedure in relation to the circumstances of the dispute or to any aspect of any such procedure. If the parties so agree, they may entrust the Mechanism with

---

293/ Ibid., article 28; see also paragraph 284 below for examples of application of the Convention.

294/ ILM, 1975, p. 1292 and ff.

295/ A/45/859, annex.

296/ Report of the Meetings of Experts on Peaceful Settlement of Disputes, Valleta, 1991. The meeting was held in January-February 1991 to fulfil the mandate given by the Vienna (1986) and Paris (1990) sessions of the CSCE and the report is to be considered at the next meeting of the Council of CSCE (International Legal Materials, vol. XXX, p. 382).

297/ 1975 Helsinki Final Act, Chapter V; 1991 Valleta Report, Sections I and III.

298/ 1991 Valleta Report, Section IV.

299/ Ibid., Section V, paras. 1 to 5.

fact-finding or expert functions as well as with binding powers regarding the partial or total settlement of the dispute. 300/

258. In three specific instances, the system set up by the CSCE contemplates the intervention of another organ, namely the Committee of Senior Officials, 301/ in the settlement of a dispute:

(a) If after considering in good faith and in a spirit of cooperation the advice and comment of the Mechanism, the parties are unable, within a reasonable time, to settle the dispute, any party to the dispute may so notify the Mechanism and the other party, whereupon any party may bring that circumstance to the attention of the Committee of Senior Officials. 302/

(b) Notwithstanding a request by a party to the dispute, the Mechanism will not be established or continued if another party considers that because the dispute raises issues concerning its territorial integrity, or national defence, title to sovereignty over land-territory, or competing claims with regard to the jurisdiction over other areas, the Mechanism should not be established or continued. In that case, any other party to the dispute may bring that circumstance to the attention of the Committee of Senior Officials. 303/

(c) In the case of a dispute of importance to peace, security or stability among the participating States in CSCE, any party to the dispute may bring it before the Committee of Senior Officials, without prejudice to the right of any participating State to raise an issue within the CSCE process. 304/

(f) European and inter-American systems for the protection of human rights

259. As the 1950 Rome Convention has been an important source of inspiration for the 1969 Pact of San José, 305/ it may be appropriate to examine both systems together, indicating their similarities and differences. Both conventions create a procedural first stage involving organs with functions of mediation and conciliation (European Commission of Human Rights 306/ and Inter-American

---

300/ Ibid., Section XIII.

301/ Composed of representatives of Participating States in the Conference and chaired by a representative of the State whose Minister for Foreign Affairs had been Chairman at the preceding meeting of the Council of Ministers for Foreign Affairs. See Charter of Paris, A/45/859, annex, Supplementary Document, I.B. Institutional arrangements: the Committee of Senior Officials.

302/ 1991 Valleta Report, Section IX.

303/ Ibid., Section XII.

304/ Ibid., Section II.

305/ See note 262, *supra*.

306/ The European Commission consists of a number of members equal to that of States Parties to the Convention; they are elected for a period of six years by the Committee of Ministers of the Council of Europe.

Commission, 307/ respectively) and a possible second stage involving judicial organs (European Court of Human Rights 308/ and Inter-American Court of Human Rights, 309/ respectively). The European Convention also contemplates the possible intervention of a political organ, the Committee of Ministers, with functions partly mediatory and conciliatory and partly judicial. Under both systems the applications or petitions, whether from States or individuals, must always be referred in the first place to the Commission. 310/

260. In the practice of both systems so far, the cases of individuals bringing applications or communications alleging a breach of the Convention have been far more numerous than cases involving a State alleging the violation of Convention provisions by another State. The latter are the only true cases in which both regional systems may function as regional means for the peaceful settlement of disputes between States. In this connection, some differences between both systems are to be noted. Under the European Convention any State Party may bring before the Commission a claim that another State Party has violated the Convention (article 24). Under the Inter-American Convention, however, a special declaration is required from both the claimant and the defendant States whereby they recognize the competence of the Commission to receive and examine communications by which a State Party alleges that another State Party has committed a violation of a human right set forth in the Convention (article 45). Conversely, no special declaration is required under the Inter-American system for individuals to bring cases before the Commission alleging the violation of the Convention by a State (article 44), whereas under the European system a special declaration by the defendant State is required to have been made recognizing the Commission's competence in such cases (article 25).

261. Under the European system, when cases concerning human rights violations have been brought before the Commission by States rather than individuals, the procedure has, with one exception, ended up before the Committee of Ministers rather than the

---

307/ The Inter-American Commission on Human Rights is composed of seven members elected for a period of four years by the General Assembly of the organization.

308/ The European Court of Human Rights consists of a number of judges equal to that of the Members of the Council of Europe elected for nine years by the Consultative Assembly of the Council.

309/ The Inter-American Court of Human Rights consists of seven judges elected in the General Assembly of OAS by a majority of States Parties to the 1969 Pact of San José.

310/ 1950 European Convention, article 47; 1969 Pact of San José, article 61 (2). The Committee of Ministers of the Council of Europe consists of the Ministers for Foreign Affairs of Member States of the Council.

Court. 311/ This transpired, for instance, in the various cases concerning South Tyrol, Greece and Turkey. 312/

262. The coming into functioning of the American system is relatively recent and its practice not yet very abundant. Apart from the exercise by the Inter-American Court of its consultative jurisdiction, which does not fall under the concept of "peaceful settlement of disputes between states", 313/ only three contentious cases have been brought so far before the Court. They are all cases against the Government of Honduras and were submitted by the Inter-American Commission.

(g) African Charter on Human and Peoples' Rights

263. Adopted under the aegis of the Organization of African Unity, the African Charter adopted at Banjul created the African Commission on Human and Peoples' Rights which may receive communications from States Parties to the Charter alleging that another State Party to the Charter has violated the Charter's provisions. 314/ These communications may be made either after the failure of a period of direct negotiations between the States concerned on the possible settlement of the human rights dispute 315/ or directly to the Commission. 316/ The Commission may seek all relevant information from the States concerned and also has mediatory and conciliatory functions, trying all appropriate means to reach an amicable solution. 317/ In cases of a series of serious or massive violations of human and

---

311/ If the European Commission fails in its conciliation functions and the Court is not in a position to take cognizance of the case, either because it lacks jurisdiction or because the case was not referred to it within a three-month deadline or for any other reason, the Committee of Ministers, after receiving a report submitted to it by the Commission, decides whether there has been a violation of the Convention. The parties to the Convention undertake to consider the Committee's decision as binding (1950 European Convention, article 32).

312/ Cf. Henry, G. Schermers, International Institutional Law (1980), p. 335, para. 550. See also Council of Europe, Yearbook of the European Convention on Human Rights, 1984, p. 267. European Commission Case Law: Interstate applications. However, the exception was the Court's judgment in Ireland vs. United Kingdom.

313/ At the request of various States Parties to the Convention, the Court has issued several advisory opinions on the interpretation or application of the Convention (1969 Pact of San José, article 64).

314/ 1981 African Charter on Human and Peoples' Rights, articles 47 to 49. The African Commission consists of 11 members serving in a personal capacity, who are elected by the Assembly of Heads of State and Government of the Organization of African Unity (Banjul Charter, articles 31-33).

315/ Ibid., articles 47 and 48.

316/ Ibid., article 49.

317/ Ibid., articles 51-53.

people's rights, the Commission may also consider communications from States other than parties to the Charter. 318/ In all cases the Commission draws a report stating its factual findings and its recommendations, which it transmits to the OAU Assembly of Heads of State and Government. 319/

(h) European Communities

264. As regards the settlement of disputes between members of the European Communities, the latter have undertaken not to submit a dispute concerning the interpretation or the implementation of the Treaty establishing the European Economic Community of 25 March 1957 to any method of settlement other than those provided in the Treaty. 320/

265. Two organs are involved in the settlement of these disputes: (a) the Commission of the European Communities and (b) the Court of Justice. 321/

266. If a member State considers that another member State has failed to fulfil an obligation under the Treaty establishing the Community, it must first bring the matter before the Commission. 322/ The Commission shall deliver a reasoned opinion within three months but this opinion is not final. 323/ If the Commission does not meet its deadline or if the claimant party does not agree with the Commission's opinion or if the defendant party does not comply with the opinion, the matter may then be brought before the Court of Justice. 324/

267. The Court is thus competent to decide on cases in which a State member of the Community considers that another member State has failed to fulfil an obligation under the Treaty but it also has jurisdiction on any dispute between member States relating to the subject-matter of the Treaty if the dispute is submitted to it under a special agreement between the parties. 325/ If the Court finds that a member State has failed to fulfil an obligation under the Treaty, the State shall be required to take the necessary measures to comply with the judgement. 326/

318/ Ibid., article 58.

319/ Ibid., articles 52, 53 and 58.

320/ 1957 EEC Treaty, article 219; see also note 263 above.

321/ The Commission consists of 17 members elected for a four-year term by the Council of the European Communities. There must be at least one and no more than two nationals of each member State but commissioners act in a personal capacity and are appointed by common accord of the Governments of the member States.

322/ 1957 EEC Treaty, article 170.

323/ Ibid.

324/ Ibid.

325/ Ibid., article 182.

326/ Ibid., article 171.

(i) Economic Community of West Africa

268. As to disputes arising between members of the Economic Community of West Africa (ECOWAS), regarding the interpretation or application of the Treaty under which it was created, 327/ the latter provides that such disputes shall be amicably settled by direct agreement. 328/ Whenever such an amicable settlement is not possible, any party to the dispute may refer the matter to a Tribunal of the Community whose function will be to settle the dispute, through final decisions, ensuring the observance of law and justice in the interpretation of the provisions of the treaty. 329/

(j) Agreements on shared management of resources

269. Provisions on the peaceful settlement of disputes may also be found in some regional agreements of a multilateral nature concerning the shared management of resources. 330/ Thus, the 1963 Agreement on navigation and economic cooperation between the States of the Niger Basin provides that any dispute arising between the riparian States regarding the interpretation or application of the Agreement shall be amicably settled by direct agreement between them or through the inter-governmental organization contemplated in the Agreement. Failing such settlement, the dispute shall be decided by arbitration, in particular by the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity, or by judicial settlement by the International Court of Justice. 331/

270. The 1956 Convention on the Canalization of the Moselle and the 1961 Protocol on prevention of the pollution of the Moselle provide for direct negotiation. 332/ Failing this, the Convention contemplates arbitration, with a series of provisions regulating this procedure, including a special procedure for cases involving urgency. 333/

271. The 1959 Lake Inari agreement provides that any dispute regarding the application of the agreement shall be settled by a mixed commission composed of two members appointed by each party to the agreement. Failing this procedure the agreement contemplates the settlement of dispute through the diplomatic channel. 334/

327/ *Supra*, note 263.

328/ 1975 ECOWAS Treaty, ibid., article 56.

329/ Ibid., articles 55 and 11.

330/ *Supra*, note 264.

331/ 1963 Niger Basin Agreement, ibid., article 7.

332/ 1956 Convention, article 57 (for the 1961 Protocol, see note 264, *supra*)

333/ Ibid., articles 59 and 60.

334/ 1959 Lake Inari Agreement (*supra*, note 264), article 7.

3. Actual resort to regional agencies or arrangements in dispute settlement

272. International practice shows that regional agencies or arrangements have dealt with a number of disputes, applying the relevant provisions on peaceful settlement contained in their constituent instruments as well as principles derived from subsequent practice. Further to the previous section of the present chapter, which has examined in some detail the institutional arrangements involved in the regional procedures, the following paragraphs will outline a brief account of actual disputes submitted by States to some of these regional procedures of peaceful settlement.

(a) League of Arab States

273. An example of intervention of the League Council as an arbitration organ is a 1949 dispute between Syria and Lebanon concerning extradition matters. After the Council intervention, the parties agreed to submit their dispute to the Governments of Saudi Arabia and Egypt, for arbitration. 335/

274. As to the Council's functions of good offices, mediation and conciliation, the Council has considered that they also imply fact-finding activities and has appointed committees to that effect. Such was the case, for instance, in the 1958 Lebanon crisis, in which Lebanon complained to the League Council about acts of intervention of the United Arab Republic in the internal affairs of Lebanon as well as in the 1962 Yemen situation of internal civil strife; similarly, in the 1963 boundary dispute between Algeria and Morocco and in the 1972 border dispute between the Democratic People's Republic of Yemen and the Yemen Arab Republic. 336/

275. Often the League Council has included the Secretary-General in the special bodies it has created for its mediation and fact-finding missions. Examples of the latter are the 1948 and 1962 Yemen situations of internal civil strife and the 1963 boundary dispute between Algeria and Morocco. In some cases the Council has vested in the Secretary-General alone the functions of offering good offices, as in the 1961 situation involving the secession of Syria from the United Arab Republic. 337/

276. As far as ad hoc mechanisms are concerned, it may be mentioned that, with regard to the recent Lebanese crisis, the Special Arab Summit of the League, held at Casablanca from 23 to 26 May 1989, decided to constitute a High Committee composed of the Heads of State of Algeria, Morocco and Saudi Arabia. The High Committee was entrusted with the mission of promoting the convening of a meeting of the members of the Lebanese Parliament in order to discuss the adoption of

---

335/ Hussein A. Hassouna, "The League of Arab States and the United Nations: relations in the peaceful settlement of disputes", Regionalism and the United Nations (United Nations Institute for Training and Research, 1979), p. 299. Also, by the same author: The League of Arab States and regional disputes (New York and Leiden, 1975).

336/ Ibid., p. 312.

337/ Ibid., pp. 312-316.

political reforms, to proceed to the election of the President of the Republic and to constitute a Government of national unity. 338/

(b) Organization of American States

277. The Permanent Council may exercise a variety of functions, including good offices, inquiry and fact-finding at the request of one party to a dispute. The border conflict between Costa Rica and Nicaragua may be mentioned as an example of their application. As a result of serious incidents having taken place on the border between Costa Rica and Nicaragua, the Government of Costa Rica had recourse to the OAS Permanent Council, which by means of a resolution adopted on 7 June 1985 339/ requested the Governments of Colombia, Mexico, Panama and Venezuela to form a fact-finding committee, with the participation of the Secretary-General of OAS, to ascertain the events described by Costa Rica. After carrying out an on-site investigation, the committee reported to the Permanent Council. After considering the report, 340/ on 11 July 1985 the Permanent Council adopted a resolution in which it recommended to the Governments of Nicaragua and Costa Rica that they proceed to start talks within the framework of the Contadora countries' negotiating process. 341/ By the same resolution, the Permanent Council decided to consider that the committee's mandate was accomplished.

278. As for the role of the OAS Secretary-General himself, further to his participation in the above-mentioned fact-finding Committee may be noted. Furthermore, and as regards the global situation in Central America, he has taken the initiative of submitting on 18 November 1986 an *aide-mémoire* to the Governments of the five Central American States (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and the eight Governments making up the Contadora and Support Groups (Colombia, Mexico, Panama and Venezuela, and Argentina, Brazil, Peru and Uruguay respectively), in which he explained the assistance that both organizations, singly or jointly, could provide for the purpose of promoting the peace efforts of the two Groups. As a result of said initiative, the Contadora and Support Group States requested the participation of the two Secretaries-General (United Nations and OAS) in a visit to the capitals of the five Central American countries, 342/ which took place in January 1987.

338/ See the final communiqué of the Special Arab Summit, held at Casablanca from 23 to 26 May 1989, in: *Actualité arabe* (Centre arabe de documentation et d'information), vol. IX (203), p. 66 (juin 1989) (in French); see also S/20789.

339/ See OAS Permanent Council resolution CP/Res. 427 (618/85).

340/ See the report of the Fact-Finding Committee established by the Permanent Council to investigate the complaint filed by the Minister of Foreign Affairs of Costa Rica, OAS document CP/doc. 1592/85.

341/ See the resolution adopted by the Permanent Council of the Organization of American States at its special meeting held on 11 July 1985 (A/40/737-S/17549, annex IV). The Contadora countries are Colombia, Mexico, Panama and Venezuela.

342/ See the report of the OAS Secretary-General to the Permanent Council on 29 January 1987, Sec. G., CP/ACTA: 685/87 (1987).

279. On 7 August 1987, the Presidents of the five Central American countries signed an agreement entitled "Procedure for the Establishment of a Firm and Lasting Peace in Central America", better known as the Esquipulas II Agreement, 343/ which established an International Verification and Follow-up Commission to be composed of the Foreign Ministers of the five Central American States and of the Contadora and Support Group States as well as the two Secretaries-General. Therefore, the OAS General Assembly, by a resolution adopted on 14 November 1987, 344/ authorized the Secretary-General of OAS to continue carrying out the functions he had been performing, namely, participation in the International Verification and Follow-up Commission, and also requested him to provide every assistance to the Central American Governments in their efforts to achieve peace. The International Verification and Follow-up Commission met several times from August 1987 to January 1988 and reported to the signatories of the Esquipulas II Agreement on 14 January 1988. 345/

280. As part of the agreements reached at Tela, Honduras, on 7 August 1989, the five Central American States agreed on a Joint Plan for the Demobilization, Repatriation and Relocation of the Nicaraguan Resistance and their Families, the execution of which will be placed under the supervision of an International Support and Verification Commission (CIAV) whose membership includes the Secretary-General of OAS. 346/ Furthermore, the Secretary-General of OAS, together with the Secretary-General of the United Nations, was requested by the indicated Plan to certify that it had been fully implemented.

281. As the Pact of Bogotá 347/ is envisaged by the OAS Charter (article 26) as the special treaty which will establish the adequate means for the settlement of disputes, contemplated in the OAS Charter, it is appropriate to mention here an example of application of this treaty. It concerns the recent judgment by the International Court of Justice of 30 December 1988 on the case concerning *Border and Transborder Armed Actions (Nicaragua v. Honduras)*. The Court concluded, as invoked by Nicaragua, that it had jurisdiction on the case under article XXXI of the Pact of Bogotá. 348/

(c) *Organization of African Unity*

282. Several examples may be given of ad hoc organs created either by the Council of Ministers or by the Assembly of Heads of State and Government in its efforts towards the peaceful settlement of disputes among African States. Thus, after armed incidents took place in October 1963 between Algeria and Morocco in connection with a disputed area of the Sahara, and following the personal

---

343/ For the text of the agreement see A/42/521-S/19085, annex.

344/ See OAS General Assembly resolution 870 (VII-0/87).

345/ See A/43/729-S/20234.

346/ See A/44/451, annex.

347/ *Supra*, note 260.

348/ *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 69.

intervention of some heads of State, an extraordinary meeting of the Council of Ministers was convened at which an ad hoc commission was established to examine the questions connected with the frontier dispute and make recommendations for its peaceful settlement. 349/ Other cases of mediation by heads of State include the following: in 1966, President Mobutu of Zaire, at the request of the OAU Assembly, mediated in an ethnic conflict between Rwanda and Burundi; 350/ in 1972, the President of Somalia and the Administrative Secretary-General of OAU successfully mediated in serious troop clashes and border incidents between the United Republic of Tanzania and Uganda. 351/

283. Furthermore, an ad hoc committee was created by the Assembly in 1971 to attempt to mediate in a conflict involving Guinea and Senegal on the extradition of Guinean exiles alleged to have committed acts of government destabilization in Guinea. 352/ More recently, the Assembly of Heads of State and Government of the Organization of African Unity created an Ad Hoc Committee of Heads of State on Western Sahara in order to find a peaceful solution to the ongoing conflict between Morocco and the Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (POLISARIO Front). That Ad Hoc Committee set up the Implementation Committee of Heads of State on Western Sahara to ensure the observance of a cease-fire that had to be agreed upon between the parties to the dispute. Also, the Implementation Committee had to organize and conduct a referendum, under the auspices of OAU and the United Nations, to enable the people of that territory to exercise their right to self-determination. 353/

(d) European Convention for the Peaceful Settlement of Disputes (Council of Europe)

284. Two specific instances may be cited, as regards juridical settlement, in which the Convention's provisions were invoked. First, they were invoked as a basis of the International Court of Justice's jurisdiction in the 1969 North Sea Continental Shelf cases. The Convention also was at the basis of an agreement dated 17 July 1971 between Austria and Italy accepting the jurisdiction of the International Court of Justice in connection with any dispute concerning the status of the German-speaking minority in the southern Tyrol. 354/

349/ Cf. David Meyers, "Intraregional conflict management by the Organization of African Unity", International organization, vol. 28 (1974), p. 354.

350/ Ibid., p. 359.

351/ Ibid.

352/ Ibid.

353/ Cf. OAU resolution ARG/res. 104 (XIX).

354/ Cf. Encyclopedia of Public International Law, vol. I, Settlement of disputes, p. 58; K. Sinther, "European Convention for the peaceful settlement of disputes".

4. Relations between regional agencies or arrangements and the United Nations in the field of the peaceful settlement of local disputes

285. An important question concerns the harmonization of various provisions of the Charter of the United Nations dealing with the respective competence of regional agencies or arrangements under Article 52 of the Charter on the one hand and of the United Nations organs, on the other, in the area of the peaceful settlement of local disputes. These provisions are, mainly, Articles 34, 35, paragraph 1, and 52 of the Charter of the United Nations. While the States members of some regional bodies have consistently observed the principle of "try first" the machinery of the regional body concerned and have acquiesced in resolutions of their regional body reaffirming this principle, 355/ some States members of other regional bodies have insisted that disputes to which they are parties be handled directly by the Security Council. 356/

286. A practice has evolved which tends to reconcile in a balanced manner the "regional" and the "universal" approaches represented by the positions described in the preceding paragraph. Certainly, if the parties to a dispute agree *ab initio* to resort to a regional agency or agreement for the peaceful resolution of a local dispute and both parties maintain this initial disposition throughout the various stages of the regional procedure, then the regional attempts to solve the local dispute may prove effective and fruitful, to the exclusion of the universal forum.

287. The question really arises whenever one of the parties to a local dispute has reservations about the regional forum and is interested in having direct access to the universal forum of the United Nations and brings the dispute to the attention of the Security Council. Under such circumstances, the Security Council has evolved a practice whereby it inscribes the matter in its agenda. After consultations with the parties to the dispute and if the dispute has not yet become sufficiently acute as actually to endanger international peace and security, the Council may decide, in accordance with Article 52, paragraphs 2 and 3, of the Charter, to refer the dispute to the regional forum but keeping the matter in its agenda, under review. The advantage of maintaining the dispute in the agenda of the Security Council while the dispute is being handled in the regional forum and the Council awaits the latter's report lies in the fact that if the dispute evolves into one actually endangering international peace and security, or if one of the

---

355/ See ECM, resolutions 1 (I) of 18 November 1963 and 5 (II) of 3 September 1964 of the Council of Ministers of OAU.

356/ See the 1954 Guatemala situation, *Repertory of the Practice of United Nations Organs*, vol. II, 1955, article 52, para. 38, and 1961 Complaint by Cuba, ibid., *Supplement No. 3*, 1971, article 52, paras. 29 and 30.

parties to the dispute deems the regional procedure to have failed in its attempts to settle the controversy, the Security Council may resume immediately its consideration of the dispute without a prior discussion of the advisability of incorporating the matter into its agenda.[357]

---

[357] See, *inter alia*, the 1960 complaint by Cuba, *Repertory of the Practice of United Nations Organs*, vol. II, Supplement No. 3, 1971, article 52, paras. 32-36, Security Council resolution 144 (1960) of 19 July 1960, and 1964 complaint by Panama, ibid., paras. 49-64, as well as Security Council resolution 199 (1964) of 30 December 1964. Cf. also chapter II on "Agenda" of the provisional rules of procedure of the Security Council (United Nations publication, Sales No. E.83.I.4), in particular rules 9 and 10, which read as follows: "Rule 9. The first item of the provisional agenda for each meeting of the Security Council shall be the adoption of the agenda. *Rule 10*. Any item of the agenda of a meeting of the Security Council, consideration of which has not been completed at that meeting, shall, unless the Security Council otherwise decides, automatically be included in the agenda of the next meeting."

I. Other peaceful means

1. Main characteristics and legal framework

288. The list of means for the peaceful settlement of disputes contained in Article 33, paragraph 1, of the Charter of the United Nations is completed by the phrase "other peaceful means". 358/ These words indicate that the list found in that Article is not exhaustive, but is illustrative only. The obligation imposed on States by Article 33, paragraph 1, of the Charter - and by a number of treaties in which the terms of that provision are incorporated 359/ is that they must endeavour to settle their disputes by the use of peaceful procedures. To this end, they may use any procedure they wish and on the use of which they can agree, provided that it is peaceful in nature. States are therefore free to use that particular means which they consider most apt for the settlement of the particular dispute with which they are faced, 360/ provided that it falls within the framework of Article 33, paragraph 1, of the Charter, even if it is not specifically listed therein.

2. Resort to other peaceful means

289. Examples may be found of cases in which States have endeavoured to settle, or have provided for the settlement of, their disputes by the use of means which constitute "other peaceful means" within the meaning of Article 33, paragraph 1, of the Charter. Analysis of the practice adopted up to now by States reveals that while in certain of these cases the means which States have used, or for which they have provided, are completely novel in character, in a majority of cases the means which States have used or provided for represent adaptations or combinations of familiar means of settlement. The means which come within the scope of the present section of the handbook may therefore be considered to fall into three broad

---

358/ See also the second paragraph of the second principle proclaimed in the preamble to the Friendly Relations Declaration (supra, chap. I, para. 2), as well as section I, paragraph 5, of the Manila Declaration (ibid.).

359/ See, for example, article XI (1) of the Antarctic Treaty, signed at Washington on 1 December 1959, United Nations, Treaty Series, vol. 402, p. 71; and article 32 (1) of the United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988 (E/CONF.82/15 and Corr.2).

360/ In this connection, it may be recalled that under section I, paragraph 5, of the Manila Declaration the parties to a dispute are enjoined to "agree on such peaceful means as may be appropriate to the circumstances and nature of the dispute" in hand. A similar injunction can be found in article 15 (2) of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68 of 5 December 1979, annex).

categories: (a) those constituting entirely novel means which are not adaptations or combinations of the familiar means of settlement described in the preceding sections of the present chapter; (b) those constituting adaptations of one of the familiar means of settlement; and (c) those constituting combinations, in the work of a single organ charged with resolving the dispute, of two or more of the familiar means of settlement.

(a) Novel means which do not consist in the adaptation or combination of familiar means

290. States often make provision for or use of means of peaceful settlement which do not appear in the list of specific means contained in Article 33, paragraph 1, of the Charter and whose originality does not reside in the manner in which those means are adapted or combined. Certain of these means - namely, consultations, international conferences and good offices - are described elsewhere in the present handbook and do not call for further discussion here; 361/ but there do exist others.

291. A novel procedure not listed in Article 33, paragraph 1, of the Charter which States may choose to employ consists in the referral of their dispute for a ruling to a political or non-judicial organ of an international organization. They may agree that the ruling of that body is to be binding upon them or they may agree that it is to be advisory in nature only, but in either case the procedure merits consideration as a means of settlement which is distinct both from the familiar means described in the other sections of this chapter and from the less familiar means described elsewhere in this section; at least where the dispute to be settled is predominantly legal in nature.

292. The constituent instruments of many international organizations provide that disputes relating to their interpretation and application are to be referred for a ruling to the political or non-judicial organs of those organizations. The relevant provisions of these instruments are reviewed elsewhere in the present handbook and do not call for further analysis here. 362/ However, States often choose to employ a similar procedure to settle disputes arising out of treaties which are not the constituent instruments of international organizations. In such cases, they typically designate as the body to which their disputes are to be referred an organ of that international organization whose responsibilities include the matter which is the subject of the treaty between them.

293. For example, many treaties dealing with aviation matters provide that disputes relating to their interpretation or application are to be referred for a ruling to the Council of the International Civil Aviation Organization. 363/ Sometimes it is

---

361/ For consultations, see chap. II.A.1, para. 24; for international conferences, see chap. II.A.1, para. 41; for good offices, see chap. II, sect. C.

362/ See chaps. III and IV below.

363/ Or to its predecessor, the Interim Council of the Provisional International Civil Aviation Organization.

stipulated that the ruling of that body is to have the status of an advisory report. 364/ Thus, for example, the Agreement between the Government of the United States of America and the Government of the United Kingdom relating to Air Services between their respective Territories, signed at Bermuda on 11 February 1946, 365/ provided in its article 9 that:

> "Except as otherwise provided in this Agreement or in its Annex, any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or its Annex which cannot be settled through consultations shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organisation ... or its successor."

Likewise, the North Atlantic Weather Stations Agreement, signed at London on 12 May 1949, 366/ provides in its article XIV that:

> "Any dispute relating to the interpretation or application of this Agreement or Annex II, which is not settled by negotiation, shall, upon the request of any Contracting Government party to the dispute, be referred to the Council [of the International Civil Aviation Organisation] for its recommendation."

On other occasions, the treaty stipulates that the ruling of the Council is to be binding upon the parties to the dispute. Thus, for example, the Agreement between the Government of the Kingdom of Thailand and the Government of the United Kingdom of Great Britain and Northern Ireland for Air Services between and beyond their respective Territories, signed at Bangkok on 10 November 1950, 367/ provides in its article 9 that:

> "2. ... either Contracting Party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organisation or, if there is not such tribunal, to the Council of the said Organisation.

364/ Occasionally it is further provided that the parties to the dispute are to endeavour, within certain limits, to secure the implementation of the advice contained in the report. Cf. the provisions referred to in paragraphs 300 and 301 of the present section. Indeed, a provision of this type is usual in those bilateral air services agreements which provide for the reference of disputes to the ICAO Council for an advisory report. See, for example, article VIII of the Air Transport Agreement between the Government of the United Kingdom and the Government of the United States of Brazil, signed at Rio de Janeiro on 31 October 1946; United Nations, Treaty Series, vol. 11, p. 115.

365/ Ibid., vol. 3, p. 253.

366/ Ibid., vol. 101, p. 91.

367/ Ibid., vol. 96, p. 77.

> "3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this article."

294. A procedure closely analagous to the one described above consists in the submission of a dispute for an advisory report to a panel of experts which, while it is not an organ of an international organization, is nevertheless a non-judicial body operating within its framework. An example of a treaty which envisages the use of such a procedure is the International Plant Protection Convention, done at Rome on 6 December 1951, 368/ which provides in its article IX:

> "1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting Government considers that any action by another contracting Government is in conflict with the obligations of the latter under articles V and VI of this Convention ... the Government or Governments concerned may request the Director-General of FAO to appoint a committee to consider the question in dispute.
>
> "2. The Director-General of FAO shall thereupon, after consultation with the Governments concerned, appoint a committee of experts which shall include representatives of those Governments ...
>
> "3. The contracting Governments agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the Governments concerned of the matter out of which the disagreement arose."

295. An unusual method for the settlement of disputes arising under a treaty is to be found in some of the agreements concluded by the Nuclear Regulatory Commission of the United States. For example, the Agreement on Research Participation and Technical Exchange between the United States Nuclear Regulatory Commission (USNRC) and the Federal Ministry for Research and Technology of the Federal Republic of Germany (FRGMRT) in the USNRC Loss of Fluid Test (LOFT) Research Program covering a Four-year Period, signed at Washington on 20 June 1975, 369/ provides in its article VI (A):

> "Any disputes between the USNRC and FRGMRT concerning the application or interpretation of this Agreement that is not settled through consultation shall be submitted to the jurisdiction of the United States federal courts.

368/ Ibid., vol. 150, p. 67. For other similar provisions, see, for example, the Constitution of the European Commission for the Control of Foot-and-Mouth Disease, approved by the Conference of the Food and Agriculture Organization of the United Nations at its seventh session in Rome on 11 December 1953, ibid., vol. 191, p. 285, article XVII; Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, General Assembly resolution 31/72 of 10 December 1976, annex; and ibid., vol. 1108, p. 151; article V and annex, para. 1.

369/ Ibid., vol. 1066, p. 211.

> This agreement shall be construed in accordance with the internal federal law applicable in the appropriate United States courts, to agreements to which the Government of the United States is a party."

An identically worded provision is to be found in article VI (A) of the Agreement on Research Participation and Technical Exchange between the United States Nuclear Regulatory Commission and the Nordic Group (Forsogsanlaeg Riso, Denmark; Valtion Teknillinen Tutkimuskeskus, Finland; Institut for Atomerenergi, Norway; and Ab Atomenergi, Sweden) in the USNRC LOFT Research Program and the Nordic Norhav Project covering a Four-year Period, concluded on 15 September 1976. 370/

(b) Adaptations of familiar means

296. As has been noted in the preceding sections of the present chapter, States are free to make adaptations to most of the means of settlement listed in Article 33, paragraph 1, of the Charter. States might exercise this power of adaptation in such a way as to change the very nature of what might otherwise be considered a familiar method of settlement and thereby create a distinct, new process.

297. For example, it is an essential feature of conciliation that the conclusions contained in the report of the conciliator are proposals only, and it remains within the unfettered discretion of the parties whether or not to accept them: the purpose of conciliation is to facilitate, and not to replace the need for, negotiations between the parties. 371/ Consequently, for the parties to a dispute to agree in advance to accept as binding and to abide by the terms of the settlement proferred by the conciliator would be to alter the very nature and outcome of the process. Those cases in which States have assumed such an obligation should therefore be considered instances of a distinct adaptation of conciliation.

298. A recent example of an agreement between States to adapt the method of conciliation so as to make binding the report of the conciliator is the Treaty Establishing the Organisation of Eastern Caribbean States, done at Basseterre on 18 June 1981, 372/ article 14 (3) of which provides:

370/ Ibid., vol. 1088, p. 53. See also the Agreement on Research Participation and Technical Exchange between the United States Nuclear Regulatory Commission and the Österreichische Studiengesellschaft für Atomenergie in the USNRC PBF Research Program covering a Four-year Period, signed on 25 February and on 3 March 1977, ibid., vol. 1087, p. 267, article V.

371/ See chap. II.E.1, para. 140.

372/ International Legal Materials, vol. XX (1981), p. 1166. Cf. the last sentence of article 85 (7) of the Convention on the Representation of States in their Relations with International Organizations of a Universal Character, done at Vienna on 14 March 1975, United Nations, Juridical Yearbook 1975, p. 87.

> "Any decisions or recommendations of the Conciliation Commission in resolution of the dispute shall be final and binding on the Member States."

Similarly, annex A, paragraph 6, of that Treaty provides:

> "... The report of the [Conciliation] Commission, including any conclusions stated therein regarding the facts or questions of law, shall be binding upon the parties."

299. States may also agree that while the report of the conciliator is not to be binding upon them they are nevertheless to be under an obligation to consider in good faith the recommendations which it contains or to make them the basis of their future negotiations. Thus, for example, article 11 (5) of the Convention for the Protection of the Ozone Layer, done at Vienna on 22 March 1985, 373/ provides in its article 11 (5) that:

> "The [Conciliation] Commission shall render a final and recommendatory award, which the parties shall consider in good faith."

A provision of this type gives to the report of the conciliator a legal importance greater than that which is typically enjoyed by such a document. Cases in which States have assumed an obligation of the kind described thus involve a departure from the traditional practice of conciliation. They should consequently be considered instances of a distinct adaptation of that method.

300. It is an essential feature of mediation that the terms of settlement presented to the parties by the mediator are proposals only, and it remains within the unfettered discretion of the parties whether or not to accept them. 374/ Consequently, for the parties to a dispute to agree in advance to abide by the terms of the settlement placed before them by the mediator would be to alter the very nature and outcome of the process. Those cases in which States have agreed to such an obligation should, therefore, be considered instances of a distinct adaptation of mediation.

301. France and New Zealand made use of a procedure of this type in order to settle the dispute between them arising out of the sinking of the *Rainbow Warrior*. Following the intervention of the Prime Minister of the Netherlands, who proffered the parties his good offices, the two States approached the Secretary-General of the United Nations in order to ask him "to act as mediator in the dispute" between

---

373/ *International Legal Materials*, vol. XXVI (1987), p. 1529. See also the last paragraph of article 9 of the Agreement between Iceland and Norway of 28 May 1980 (quoted in ibid., vol. XX (1981), at p. 799).

374/ See chap. II.D.4, para. 138.

them. 375/ The Secretary-General indicated his willingness to do so. 376/ The two States then proceeded to agree "to refer all of the problems between them arising out of the Rainbow Warrior affair to the Secretary-General of the United Nations for a ruling". 377/ They also "agreed to abide by his ruling". 378/ The Secretary-General announced that he was willing to undertake this task and to make his ruling in the near future. 379/ The "mandate" which the parties gave the Secretary-General was to find solutions which "both respect[ed] and reconcile[d]" the conflicting positions of the parties 380/ and which at the same time were both "equitable and principled". 381/ To this end, once each of the parties had presented its position to him in a brief written memorandum, 382/ the Secretary-General made contact with the parties through diplomatic channels "in order to satisfy [himself] that [he] had a full and complete understanding of their respective positions and to be sure that [he was] able to produce a ruling" of that type. 383/ He then proceeded to issue his ruling, one of the terms of which was that "[t]he two Governments should conclude and bring into force as soon as possible binding agreements incorporating" the other, substantive terms of his ruling. 384/ The parties did this three days later by means of three exchanges of letters. 385/

302. It is one of the essential features of arbitration that it results in the handing down of an award which is binding upon the parties to the dispute and

---

375/ Press statement issued on 17 June 1986 by the Prime Minister of New Zealand.

376/ Ibid.

377/ This agreement was announced in two statements issued simultaneously in Paris and Wellington on 19 June 1986.

378/ Ibid.

379/ SG/SM/3883.

380/ See the ruling of 6 July 1986 by the Secretary-General of the United Nations, UNRIAA, vol. XIX, p. 199, at p. 213.

381/ Supra, notes 377 and 380, p. 212.

382/ Supra, note 269, pp. 291 and 207.

383/ Ibid., p. 212. The information bulletin issued by the French Government following the handing down of the Secretary-General's ruling stated that the parties "sont ... demeurées en contact étroit avec le Secrétaire général" (Information Bulletin 128/86 dated 8 July 1986).

384/ Ibid., p. 215.

385/ Ibid., pp. 216-221.

which they are obligated to implement. 386/ However, States are free to alter even this aspect of the arbitral process if they so wish, and to agree in advance that the award of the arbitral tribunal shall have the juridical nature of a recommendation only. Cases in which States have agreed that the award of an arbitral tribunal is to have this character should be considered instances of a distinct adaptation of arbitration.

303. Many examples of such provisions can be found in State practice. In some cases, the dispute-settlement clause or compromis does not, either explicitly or implicitly, impose on the States party to the arbitration any obligation to comply with the conclusions set forth in the award of the arbitral tribunal, though it may impose on them an obligation to give those findings sympathetic consideration. Thus, for example, the Convention on International Liability for Damage Caused by Space Objects, opened for signature at London, Moscow and Washington on 29 March 1972, 387/ provides in its article XIX (2) that:

> "The decision of the [Claims] Commission shall be final and binding if the parties have so agreed; otherwise the Commission shall render a final and recommendatory award, which the parties shall consider in good faith." (emphasis added)

304. In other cases, States, while agreeing that the award of the arbitral tribunal is to have the status of a recommendation rather than of a binding decision, also undertake, within certain limits, to endeavour to secure the implementation of the conclusions contained in the award. Thus, for example, the Air Transport Agreement between the Government of the United States of America and the Government of Italy, signed at Rome on 6 February 1948, 388/ provided in its article 12 that:

> "Except as otherwise provided in the present Agreement or its Annex, any dispute between the contracting parties relative to the interpretation or application of the present Agreement or its Annex, which cannot be settled through consultation, shall be submitted for an advisory report to a tribunal of three arbitrators ... The executive authorities of the contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report ..."

In 1964, the United States and Italy decided to take to arbitration under that article a dispute which had arisen between them concerning the interpretation of

---

386/ See chap. II.F.3, para. 192.

387/ United Nations, Treaty Series, vol. 961, p. 187.

388/ Ibid., vol. 73, p. 113.

the 1948 Agreement; 389/ and in the following year the arbitral tribunal constituted pursuant to that _compromis_ handed down its advisory opinion. 390/

305. A further example of such a provision can be found in article X of the Agreement between the Government of the United States of America and the Provisional Government of the French Republic relating to Air Services between their respective Territories, signed at Paris on 27 March 1946, 391/ as amended in 1951. 392/ That article is almost indistinguishable from article 12 of the United States-Italy agreement of 1948, in that it provides for an arbitral award which is to have the status of an "advisory report" but also contains an undertaking by the parties to endeavour, within certain limits, 393/ to implement the advice which it contains. However, when in 1962-1963 the United States and France decided to take to arbitration under article X a dispute which had arisen between them relating to the 1946 Agreement 394/ they agreed in an exchange of letters "to consider the decision of the Arbitral Tribunal in this dispute, as binding upon [them]". 395/ Moreover, when a further aviation dispute arose between the two States in 1978, they agreed in clause 2 of the agreement by which they submitted the dispute to

---

389/ Compromise [_sic_] of Arbitration between the Government of the United States of America and the Government of the Italian Republic, signed at Rome on 30 June 1964; ibid., vol. 529, p. 314.

390/ Advisory Opinion of Arbitral Tribunal constituted in virtue of the _Compromis_ signed at Rome on 30 June 1964 by the Governments of the United States of America and the Italian Republic, UNRIAA, vol. XVI, p. 81.

391/ United Nations, _Treaty Series_, vol. 139, p. 114.

392/ Exchange of Notes Constituting an Agreement Amending article X of the Agreement of 27 March 1946 between the Government of the United States of America and the Provisional Government of the French Republic relating to Air Services between their respective Territories, done at Paris on 19 March 1951, ibid., vol. 139, p. 151.

393/ In the English text, these limits are specified in terms identical to those used in article 12 of the United States-Italy agreement. The French text, which is equally authentic, provides: "les parties contractantes feront de leur mieux dans les limites de leurs pouvoirs _légaux_ pour donner effet à l'avis consultatif". (emphasis added)

394/ _Compromis_ of Arbitration between the Government of the United States of America and the Government of the French Republic relating to the Agreement between the Governments of the United States of America and France relating to Air Services between their respective Territories signed at Paris on 27 March 1946, as amended, signed at Paris on 22 January 1963, ibid., vol. 473, p. 3.

395/ Decision of the Arbitration Tribunal established pursuant to the Arbitration Agreement signed at Paris on 22 January 1963 between the United States of America and France, given at Geneva on 22 December 1963, UNRIAA, vol. XVI, p. 11.

arbitration under article X of the 1946 Agreement that, while the award of the arbitral tribunal on the second of the two questions put to it was to be advisory only, as envisaged by article X, its award on the first question was to be binding. 396/ It should therefore be realized that, while States may agree to settle their future disputes by employing a procedure in which the process of arbitration is modified in such a way as to make the award of the arbitral tribunal recommendatory only, they are nevertheless free, when they use that procedure to settle a particular dispute, to agree that it should nevertheless result in a decision which is legally binding upon them. 397/

(c) Combination of two or more familiar means in the work of a single organ

306. While it is by no means uncommon for a treaty to envisage the sequential application to a given dispute of several different means of settlement, 398/ it is more unusual for a treaty to provide for two - or more - different methods to be applied sequentially by one and the same organ. The procedures instituted by such treaties merit consideration as autonomous means of dispute settlement, distinct from the two methods of which they are a combination. It is for this reason that conciliation, which involves the sequential discharge by one organ of the tasks of inquiry and mediation, 399/ is listed in Article 33, paragraph 1, of the Charter as a discrete means of settlement, distinct from both of those other two methods.

396/ *Compromis* of Arbitration between the Government of the United States of America and the Government of the French Republic, signed at Washington on 11 July 1978; United Nations, *Treaty Series*, vol. 1106, p. 195. Clauses 9, 10 and 11 of this agreement accordingly describe the award of the tribunal as "a decision and advisory report".

397/ Cases exist of dispute-settlement clauses and *compromis* which appear to provide for a departure from one of the essential features of arbitration, in so far as they stipulate that the award of the arbitral tribunal is to be advisory only, but which do in fact impose on the States parties an obligation to implement in full the advice which the arbitral award contains. See, for example, paragraphs 1 and 5 of the Agreement between the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America for the Submission to an Arbitrator of Certain Claims with respect to Gold Looted by the Germans from Rome in 1943, signed at Washington on 25 April 1951, ibid., vol. 91, p. 21.

398/ See, for example, the instruments cited in chapter II, section E of the handbook, notes 91 and 92; article 286 of the 1982 United Nations Convention on the Law of the Sea; articles 65 (3) and 66 of the 1969 Vienna Convention on the Law of Treaties; and article 21 of the 1928 General Act for the Pacific Settlement of Disputes.

399/ See chap. II.D.1, para. 123.

307. The two methods of conciliation and arbitration may be combined and administered by a single organ. This may occur where a treaty, in addition to empowering an arbitral tribunal to hand down a binding decision, also authorizes that body, before issuing its final award, to try to bring the parties to an amicable settlement of their dispute by proposing to them the terms of a satisfactory solution. Thus, for example, the Agreement on Economic and Technical Cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Senegal, signed at Dakar on 12 June 1965, 400/ provides in its article 6 (5) that:

> "... Before giving its verdict, [the arbitral tribunal] may, at any stage of the proceedings, propose an amicable settlement of the dispute to be agreed by the Parties."

Sometimes the exercise of this power of conciliation is made mandatory, rather than optional, the arbitral tribunal being empowered to proceed to hand down a binding award only after it has first tried and failed to persuade the parties to resolve their differences by proposing to them the terms of a possible settlement. Thus, the Agreement concerning Air Services between France and Kuwait, signed at Kuwait on 5 January 1975, 401/ provides in its article 14 (4) that:

> "If the arbitral tribunal cannot arrive at an amicable settlement of the dispute, it shall take a decision by majority vote ..."

308. A recent example of an agreement between States thus to combine in the work of a single organ the methods of conciliation and arbitration, it being incumbent upon the arbitral tribunal to explore the possibilities of conciliation before proceeding to hand down an award, is the Arbitration *Compromis* between Israel and Egypt, done at Giza on 11 September 1986. 402/ By article II of that agreement, Israel and Egypt submitted a dispute concerning the demarcation of a portion of their land boundary for decision by a five-member arbitral tribunal. At the same time, they also agreed, in article IX, that:

> "1. A three-member chamber of the [arbitration] Tribunal shall explore the possibilities of a settlement of the dispute. The three members shall be the two national arbitrators and, as selected by the President of the Tribunal ..., one of the two non-national arbitrators.
>
> "2. ... [T]his chamber shall give thorough consideration to the suggestions made by any member of the chamber for a proposed recommendation concerning a settlement of the dispute ... Any proposed recommendation concerning a settlement of the dispute which obtains the approval of the three members of the chamber will be reported as a recommendation to the parties not later than the completion of the exchange of written pleadings ...

400/ United Nations, *Treaty Series*, vol. 602, p. 231.

401/ Ibid., vol. 1072, p. 353.

402/ *International Legal Materials*, vol. XXVI (1987), p. 2.

> "3. The arbitration process shall terminate in the event the parties jointly inform the Tribunal in writing that they have decided to accept a recommendation of the chamber and that they have decided that the arbitration process should cease. Otherwise, the arbitration process shall continue in accordance with this Compromis.
>
> "4. All work pursuant to the above paragraphs absolutely shall not delay the arbitration process ..."

A three-member chamber of the arbitral tribunal was constituted pursuant to paragraph (1) of the article, but in spite of the efforts of the chamber to find a proposal which might prove acceptable to both of the States party to the arbitration, it was unable to place before them any recommendation for a settlement of the dispute. 403/ The arbitration tribunal, consequently, proceeded, in accordance with paragraph (3), to hear the parties' oral arguments to hand down an award. 404/

309. The methods of conciliation and arbitration may also be combined in the work of a single organ in a manner rather different from that described in the two preceding paragraphs. In addition to empowering an arbitral tribunal to hand down a binding award, States may also direct that body, at the same time as it issues its award, to recommend to them the manner in which they should agree to implement the conclusions which it contains. A well-known instance of a treaty in which States did this is the Special Agreement for the Submission of Questions relating to Fisheries on the North Atlantic Coast under the General Treaty of Arbitration concluded between the United States and Great Britain on 4 April 1908, signed at Washington on 27 January 1909. 405/ Under article 1 of that agreement, the United States and Great Britain submitted a series of seven questions for binding decision to a tribunal of arbitration. At the same time, they also agreed, in article 4, that:

> "The tribunal shall recommend for the consideration ... of the Parties rules and a method of procedure under which all questions which may arise in future regarding the exercise of the liberties above referred to [which were the subject of the seven questions submitted to the tribunal for its decision] may be determined in accordance with the principles laid down in the award ..."

403/ Award of 29 September 1988 of the Egypt-Israel Arbitration Tribunal Established in Accordance with the Compromis Signed 11 September 1986, ibid., vol. XXVII (1988), p. 1427, at paras. 8-11.

404/ Ibid.

405/ Scott, The Hague Court Reports (supra, note 28), p. 147.

The tribunal made several such recommendations, 406/ some of which were subsequently accepted by the parties, albeit with certain modifications. 407/

310. States may choose to combine in the work of a single organ the method of conciliation and that distinct means of settlement, described above 408/ in which the process of conciliation is adapted so as to yield a binding final report. Thus, in addition to empowering a conciliation commission to hand down a binding final report, States may also authorize that body, before it issues such a report, to try to induce them to settle their dispute amicably by proposing to them the terms of a possible solution. Indeed, practice reveals that, if States choose to give the former power to a conciliation commission, they will usually choose also to give it the latter. Thus, for example, the Treaty Establishing the Organisation of Eastern Caribbean States, 409/ in addition to providing that the report of the Conciliation Commission is to be binding, also stipulates, in its annex A, paragraph 4, that:

> "The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement."

311. States may also agree to combine the two methods of negotiation and arbitration in the work of what is effectively a single organ. Usually, when States employ the two methods sequentially, such a combination does not occur, things being so arranged that those persons who are responsible for the conduct of the negotiations do not subsequently sit as arbitrators in respect of the same dispute. However, States may decide that this shall happen, thereby, in effect, entrusting the tasks of negotiation and arbitration to a single organ. In such cases, States usually charge the negotiations to a joint commission, composed of an equal number of their representatives or of persons appointed by them. 410/ Such a commission may be empowered to agree upon a solution to the dispute which is binding upon the parties, or it may be authorized simply to formulate the terms of a draft settlement which has to be placed before the parties for their approval. If the negotiations within the commission should fail, however, the commissioners are to proceed to serve as arbitrators, together with a newly appointed, neutral member, creating the situation of an odd number of arbitrators overall. Thus, for

---

406/ Award of the Tribunal of Arbitration in the Question relating to the North Atlantic Coast Fisheries, ibid., pp. 174-176 and 188-189.

407/ Agreement between the United States of America and Great Britain adopting with certain Modifications the Rules and a Method of Procedure recommended in the Award of 7 December 1910 of the North Atlantic Coast Fisheries Arbitration, signed at Washington on 20 July 1912, ibid., p. 221.

408/ Paras. 297 and 298.

409/ *Supra*, note 372.

410/ For joint commissions, see chap. II.A, para. 38 and note 7.

example, the Agreement between Canada and France on their Mutual Fishing Relations, signed at Ottawa on 27 March 1972, 411/ provides in its article 10 that:

> "1. The Contracting Parties shall establish a Commission to consider all disputes concerning the application of this Agreement.
>
> "2. The Commission shall consist of one national expert nominated by each of the Parties for ten years. In addition, the two Governments shall designate by mutual agreement a third expert who shall not be a national of either Party.
>
> "3. If, in connection with any dispute referred to the Commission by either of the Contracting Parties, the Commission has not within one month reached a decision acceptable to the Contracting Parties, reference shall be made to the third expert. The Commission shall then sit as an arbitral tribunal under the chairmanship of the third expert.
>
> "4. Decisions of the Commission sitting as an arbitral tribunal shall be taken by a majority, and shall be binding on the Contracting Parties."

However, when a dispute arose in 1985 between Canada and France concerning the application of the 1972 Agreement, the two States agreed 412/ that, notwithstanding the terms of paragraph (1), the matter should not be considered by the joint commission provided for in paragraph (2), but should, rather, be submitted directly to the three-member arbitral tribunal provided for in paragraph (3). 413/

312. The procedure described in the preceding paragraph should be distinguished from those cases in which a dispute is referred, first, to a joint commission, and, if the commissioners cannot agree upon the terms of a settlement, is then brought before either an umpire or an arbitral tribunal whose membership does not include the commissioners who were responsible for the conduct of the failed negotiations. 414/ In cases of the latter type, the tasks of negotiation and arbitration are entrusted not to one, but to two separate organs.

411/ United Nations, Treaty Series, vol. 862, p. 209.

412/ Joint press communiqué issued on 23 October 1985 by the Canadian and French Governments.

413/ *Compromis* of Arbitration, signed at Paris on 23 October 1985, UNRIAA, vol. XIX, p. 226. For the award of the tribunal, see Decision of the Arbitral Tribunal of 17 July 1986 in the Case concerning Filleting within the Gulf of St. Lawrence, ibid., p. 225.

414/ See, for example, article XI (2) of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Portugal relative to the Construction of a Connecting Railway between Swaziland and Mozambique, signed at Lisbon on 7 April 1964, United Nations, Treaty Series, vol. 539, p. 167.

III. PROCEDURES ENVISAGED IN THE CHARTER OF THE UNITED NATIONS

A. Introduction

313. The principal organs of the United Nations established under Chapter III (Article 7, paragraph 1) of the Charter of the United Nations, namely, "a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat", constitute the most important part of the machinery necessary for the implementation of the main purposes and principles of the United Nations, in particular, to maintain international peace and security, and to that end to bring about by peaceful means, and in conformity with the principles of justice and international law, the adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

314. In exercising the powers conferred upon them by the Charter, the Security Council and the General Assembly 415/ may call upon States parties to a dispute to use any of the peaceful means of settlement of disputes listed in Article 33, paragraph 1, of the Charter. As shown by the examples given in the present chapter, the organs themselves also rely upon the application of these peaceful means when they put in motion the process of settlement of a dispute.

315. This chapter is therefore aimed to illustrate the way in which the principal organs of the United Nations perform their functions in the area of the settlement of disputes between States.

B. The Security Council

1. Role of the Security Council in the peaceful settlement of disputes

316. Under Article 24 of the Charter, the Security Council has the primary responsibility for the maintenance of international peace and security and in that context plays an important role in the settlement of disputes between States.

317. The Security Council, in performing its functions in the field of settlement of disputes, acts under various Chapters of the Charter and does not always indicate the Chapter under which it is proceeding. Primarily, the Council exercises the powers contained in Chapter VI of the Charter, using also other functions and powers under Chapter VII (under which the Council is empowered to

---

415/ The Economic and Social Council and the Trusteeship Council are not directly involved in the pacific settlement of disputes and situations, though they can indirectly contribute to their prevention or adjustment in performing their basic functions. These organs, as well as the International Court of Justice, already discussed in chapter II, section F, of the handbook, are therefore not considered in the present chapter.

take preventive or enforcement measures to maintain or restore international peace and security) and Chapter VIII, relating to procedures under regional agencies or arrangements. The main basis of its activities in the field of the peaceful settlement of disputes, however, is Chapter VI of the Charter, empowering the Security Council, inter alia: to investigate any dispute or any situation which might lead to international friction or give rise to a dispute in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security; 416/ to recommend, at any stage of a dispute or situation, appropriate procedures or methods of adjustment; 417/ to establish whether the continuance of a dispute is in fact likely to endanger the maintenance of international peace and security for the purpose of deciding whether to act under article 36 or of making recommendations for appropriate terms of settlement; 418/ and to call upon the parties to settle their disputes by the peaceful means listed in Article 33, paragraph 1, or to make recommendations to them with a view to a pacific settlement of the dispute. 419/ Thus, only the functions of the Security Council under Chapter VI, directly relating to the settlement of disputes, and some functions in this field under Chapter VIII, relating to procedures under regional agencies or arrangements, are discussed in the present section.

318. Some examples of actions taken by the Security Council under the various Articles of Chapter VI on various questions referred to it for settlement are presented below to illustrate the functions of the Council in this field.

(a) Investigation of disputes and determination as to whether a situation is in fact likely to endanger international peace and security

319. With regard to its agenda item entitled "Complaint of armed invasion of Taiwan (Formosa)", the Security Council, relying on Article 34 of the Charter, affirmed that it was "its duty to investigate any situation likely to lead to international friction or to give rise to a dispute, in order to determine whether the continuance of such dispute or situation may endanger international peace and security, and likewise to determine the existence of any threat to peace". 420/

320. The task of investigating disputes or situations has been performed by the Security Council by various means. Thus, dealing with the situation concerning

---

416/ Charter of the United Nations, Article 34.

417/ Ibid., Article 36, paragraph 1.

418/ Ibid., Article 37, paragraph 2.

419/ Ibid., Articles 33, paragraph 2, and 38.

420/ Security Council resolution 87 (1950) of 29 September 1950.

Western Sahara, the Council, at its 1850th meeting, 421/ on 22 October 1975, by its resolution 377 (1975), acting "in accordance with Article 34 of the Charter", requested the Secretary-General to enter into immediate consultations with the parties concerned and to report to the Council on the results of his consultations "in order to enable the Council to adopt the appropriate measures" to deal with the situation. With regard to the Spanish question, the Council, at its 39th meeting, on 29 April 1946, established a sub-committee and instructed it to examine the evidence and to report to the Council in order to enable the Council itself to determine the nature of the dispute, as envisaged in Article 34, although express reference to the Article was not made in the relevant Security Council resolution. 422/ In the India-Pakistan question, by contrast, the Security Council, by its resolution of 20 January 1948, 423/ established an independent Commission for India and Pakistan to, *inter alia*, "investigate the facts pursuant to Article 34 of the Charter". The Commission was composed of representatives of three Members of the United Nations: one member selected by each of the two parties, and the third designated by the two members so selected. Such a commission was also established in the Greek question. 424/ In that case, the Commission, pursuant to the Council's decision of 19 December 1946, was composed of a representative of each member of the Council. In connection with the complaint by Benin (1977), the Security Council, at its 1987th meeting, on 8 February 1977, by its resolution 404 (1977), decided to send a Special Mission composed of three members of the Council to the People's Republic of Benin in order to investigate the events of 16 January 1977 in Cotona and to report on them. 425/ In connection with the situation in the occupied Arab territories, the Council, at its 2134th meeting, on 22 March 1979, by its resolution 446 (1979), established "a commission consisting of three members of the Security Council, to be appointed by the President of the Council after consultation with the members of the Council, to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem" and requested the Commission "to submit its report to the Security Council by 1 July 1979". 426/

421/ See *Official Records of the Security Council, Thirtieth Year, Supplement for October, November and December 1975*, 1850th meeting.

422/ See Security Council resolution 4 (1946) of 29 April 1946.

423/ *Official Records of the Security Council, Third Year, Supplement for November 1948*, pp. 64 and 65, annex 1, document S/654.

424/ Ibid., *First Year, Second Series*, No. 28, 87th meeting, pp. 700 and 701.

425/ For the reference to the revised draft resolution (S/12282/Rev.1), see ibid., *Thirty-second Year*, 1987th meeting, para. 3; for its adoption, see ibid., para. 123. For the report of the Special Mission, see ibid., *Thirty-second Year, Special Supplement No. 3*, document S/12294/Rev.1.

426/ For the results of the vote, see ibid., *Thirty-fourth Year*, 2134th meeting, para. 113.

321. The determination of the nature of disputes or situations under Article 34 is relevant also to the application of Article 37, according to which the Security Council is to decide whether to take appropriate steps if it deems that the continuance of the dispute "is in fact likely to endanger the maintenance of international peace and security". In this connection it should be emphasized that, where the Council has established a subsidiary organ to carry out an investigation, it reserves the right of making the final determination as to the nature of the dispute or situation as envisaged in Article 34. This was illustrated by the actions it took in the above-mentioned Spanish question, 427/ which also brought to light the difficulties concerning the establishment of criteria for deciding whether a situation "is likely to endanger the maintenance of international peace and security". 428/

(b) Recommendation to States parties to a dispute to settle their disputes by peaceful means

322. The functions of the Security Council under this heading are described in Articles 36, 37 and 38 of the Charter. Thus, under Article 36, paragraph 1, the Council has the power to "recommend appropriate procedures or methods of adjustment"; under Article 37, paragraph 2, it has the power to "recommend such terms of settlement as it may consider appropriate"; and under Article 38, the power to "make recommendations to the parties with a view to a pacific settlement of the dispute". A review of the practice of the Security Council 429/ indicates, however, that evidence of the relation of the decisions by the Security Council to provisions of Articles 36 to 38, i.e., the application of those Articles in the work of the Council, has "continued to be scant". 430/ Thus the assessment of the application of Articles 36 to 38 by the Security Council should be done primarily by taking into consideration their broad bearing on the work of the Council, especially the latest trends and developments in this field. The increasing importance of application of Articles 36 to 38 of the Charter for the realization of the role of the Security Council in pacific settlement can be clearly shown, for example, by the provisions of later instruments reflecting new important trends and developments in this field, such as the 1982 Manila Declaration on the Peaceful Settlement of International Disputes (see para. 2 above) (especially those contained in para. 7) and the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (see above, para. 2) (especially those contained in paras. 6-15).

427/ Ibid., First Year, First Series, No. 2, 39th meeting, p. 244.

428/ Ibid., 35th meeting.

429/ See, for example, Repertoire of the Practice of the Security Council, Supplement 1969-1971, p. 192; ibid., Supplement 1975-1980, p. 388.

430/ Ibid., Supplement 1975-1980, p. 388.

(i) Recommendation of specific settlement terms

323. The application of Article 36 of the Charter by the Security Council is reviewed in the present section, not only in the light of the relevant decisions of the Council under the Article, according to which the Council may recommend procedures or methods of adjustment, but also in the light of the specific proceedings which constituted methods of adjustment or means for the settlement of the questions brought before the Council.

324. On the basis of a general review of the functions of the Security Council under Article 36, some examples of such specific procedures or methods of adjustment recommended or employed by the Council may be briefly summarized below:

(a) After consideration of the United Kingdom complaint against Albania arising out of an incident on 22 October 1946 in the Corfu Channel, the Council, at its 127th meeting, on 9 April 1947, recommended 431/ that the parties refer the dispute to the International Court of Justice;

(b) In the course of the debate in connection with the Palestine question, in 1948, the Council identified the particular procedures and methods aimed at halting the hostilities. Procedures of pacific settlement under Chapter VI of the Charter were expressly asserted, 432/ and the Council supplemented its earlier call 433/ for the cessation of acts of violence. As regards the procedures aimed at achieving the political settlement, the Security Council requested the convocation of a special session of the General Assembly in accordance with Article 20. 434/ The Council, in its resolutions, enjoined all concerned to take specific measures with a view to the cessation of violence and established a truce commission to supervise the implementation of these measures. 435/ It further instructed the United Nations Mediator in Palestine, appointed by the General Assembly, to promote a peaceful adjustment of the situation, to supervise the implementation of the

---

431/ See Security Council resolution 22 (1947) of 9 April 1947.

432/ See Repertory of Practice of United Nations Organs, vol. II, Articles 23-54 of the Charter, Article 36, paras. 67-69.

433/ See Security Council resolution 43 (1948) of 1 April 1948.

434/ See Security Council resolution 44 (1948) of 1 April 1948.

435/ Official Records of the Security Council, Third Year, Supplement for April 1948, document S/723; see also Security Council resolution 48 (1948) of 23 April 1948.

cease-fire measures 436/ and reinforced them by the decision 437/ to consider possible action under Chapter VII in the case of the failure of the parties to implement the cease-fire resolution;

(c) In the course of the Council's efforts to assist the Governments of Malta and the Libyan Arab Jamahiriya in settling their differences regarding the delimitation of the continental shelf area between the two countries and in connection with the complaint by Malta against the Libyan Arab Jamahiriya (1980), the use of judicial procedures to obtain a peaceful resolution of the conflict was envisaged by the Council. 438/

325. As indicated in paragraph 310 above, the Security Council, in performing its functions in the pacific settlement of disputes, may rely upon the application of some of the specific means of peaceful settlement enumerated in Article 33 of the Charter. In a number of instances involving armed hostilities - for example, in the Indonesian question (1947), 439/ the Palestine question (1948) 440/ and the India-Pakistan question (1948-1950) 441/ - the Security Council adopted decisions under Article 36 involving recourse to procedures of good offices, mediation, conciliation and arbitration or other peaceful means. With respect to the India-Pakistan question, it may be further noted that the Security Council used a combination of such procedures as investigation, mediation, conciliation, good

---

436/ See Security Council resolutions 49 (1948) of 22 May 1948 and 50 (1948) of 28 May 1948.

437/ Security Council resolution 50 (1948), paragraph 11.

438/ The Council's activities in this respect may be illustrated by its consideration of the issue at the 2246th meeting of the Council, on 4 September 1980 (see Official Records of the Security Council, Thirty-fifth Year). See also ibid., Supplement for October, November and December 1980, documents S/14228, S/14229 and S/14256.

439/ See Security Council resolution 27 (1947) of 1 August 1947.

440/ See Security Council resolutions 43 (1948) of 1 April 1948; 44 (1948) of 1 April 1948; 46 (1948) of 17 April 1948; 48 (1948) of 23 April 1948; 49 (1948) of 22 May 1948; and 50 (1948) of 28 May 1948; see also the reports of the Truce Commission (documents S/758, S/759 and S/761) and the report of the United Nations Mediator on Palestine to the Security Council, Official Records of the Security Council, Third Year, Supplement for July 1948, document S/888.

441/ See Repertory of Practice of United Nations Organs, vol. II, Articles 23-54 of the Charter, Article 36, paras. 91-102.

offices and arbitration. 442/ In two questions not involving hostilities, the Iranian question (1946) and the Corfu Channel incidents, the Security Council, in the former instance, at its 5th meeting, on 30 January 1946, 443/ took note of the proposed recourse to direct negotiations and, in the latter, at its 127th meeting, on 9 April 1947, 444/ recommended settlement by judicial means. 445/ A call for negotiations was made, for example, in paragraph 5 of the Council's resolution 353 (1974) of 20 July 1974, adopted in connection with the situation in Cyprus, while in paragraph 2 of Security Council resolution 479 (1980), of 28 September 1980, adopted with regard to the situation between Iran and Iraq, the parties were urged to accept any appropriate offer of mediation or conciliation or resort to regional agencies or arrangements or other peaceful means. Other instances in which the Security Council has endorsed the efforts of the parties to settle their disputes by peaceful means include paragraph 6 of Council resolution 473 (1980) of 13 June 1980, adopted in connection with the question of South Africa, and paragraph 2 of Council resolution 395 (1976) of 25 August 1976, adopted with regard to the complaint by Greece against Turkey.

326. The Council has recognized that when using its power to make recommendations under Article 36, paragraph 2, it "should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties". This was illustrated at its meeting of 27 May 1958 in connection with the complaint by Lebanon. After its consideration of a proposal by the representative of Iraq that the Council postpone its consideration of the question pending its consideration at an upcoming meeting of the League of Arab States, when reference was made to Article 36, paragraph 2, the Council adopted 446/ the proposal to adjourn the meeting until 3 June 1958 (by which time it would be known whether the question could be resolved outside the Council), on the understanding that the Council would meet at short notice at the request of the representative of Lebanon.

327. The Charter provides that the Security Council, when exercising its power to recommend appropriate procedures or methods of adjustment, should take into consideration the distribution of competence between the Council in the field of peaceful settlement of disputes and the International Court of Justice as the

---

442/ See Official Records of the Security Council, Third Year, Nos. 1-15, 230th meeting; and Security Council resolutions 39 (1948) of 20 January 1948 and 91 (1951) of 30 March 1951.

443/ See Security Council resolution 2 (1946) of 30 January 1946.

444/ See Security Council resolution 22 (1947) of 9 April 1947.

445/ A detailed consideration of various ways and means of peaceful settlement involving activities of the Security Council in particular is contained in chapter II of the present handbook.

446/ Official Records of the Security Council, Thirteenth Year, 818th meeting, paras. 8 and 41.

principal judicial organ of the United Nations. 447/ This distribution of competence is referred to in Article 36, paragraph 3, of the Charter, which provides that "in making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court". 448/ One instance of the application of Article 36, paragraph 3, was the Corfu Channel incidents (1947), in connection with which the Council recommended, at its 127th meeting, on 9 April 1947, 449/ "that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court". 450/ Another example is the question of the detention of United States diplomatic personnel in Tehran, in which the Council, in its resolution 461 (1979), of 31 December 1979, took into account the Order of the International Court of Justice of 15 December 1979 (S/13697). 451/ However, in its resolution 395 (1976) of 25 August 1976, concerning the complaint by Greece against Turkey, the Council invited both Governments to continue to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, would make within the purpose of the pacific settlement of remaining differences in connection with the dispute. Thus the question was being considered by both the Security Council and the International Court of Justice.

328. The practice indicates, however, that the distinction between the "appropriate procedures or methods of adjustment" which can be recommended by the Council under Article 36, paragraph 1, and "terms of settlement" which can be recommended by the Council under Article 37, paragraph 2 (in addition to its right to call upon the parties to settle the dispute by the peaceful means under Article 33), is not always clear. An example is the recommendation by the Council in its resolution 47 (1948) adopted at its 286th meeting, on 21 April 1948, 452/ for a plebiscite concerning the State of Jammu and Kashmir in order to settle the India-Pakistan

---

447/ For the detailed consideration of judicial settlement of disputes see chapter II, section G, above.

448/ Another important issue of the "distribution of competence" of the principal organs in this field - the correlation between the Security Council and the General Assembly - will be considered in section C dealing with the role of the General Assembly, in particular under Articles 11, 12 and 35, paragraph 3.

449/ See Security Council resolution 22 (1947) of 9 April 1947.

450/ See also I.C.J. Yearbook 1947-1948, pp. 55-60; The Corfu Channel Case, (Preliminary Objection) I.C.J. Reports 1948, p. 15, at pp. 31 and 32.

451/ Security Council resolution 461 (1979) of 31 December 1979, sixth preambular paragraph.

452/ See Official Records of the Security Council, Third Year, No. 61, 286th meeting, pp. 9-40.

question. The role played by the Security Council under Article 36 is closely connected with its role under Article 37, 453/ which provides that "if the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate".

329. It is necessary, however, to point out in respect of the application of Article 37, paragraph 2, that the Security Council takes into account the positions of the parties to the dispute. 454/ This issue is illustrated, for example, in the Council's consideration of the India-Pakistan and the Suez Canal questions. During the proceeding on the India-Pakistan question, in 1957, the Council adopted a resolution which omitted the terms that were regarded as unacceptable by one of the parties in the dispute and adopted a draft resolution which took into account the position of both parties. 455/ In dealing with the Suez Canal question, at its 743rd meeting, on 13 October 1956, the Council failed to adopt a second part of the draft resolution which had not been accepted by both parties. 456/

(ii) General recommendation to the parties to resort to peaceful means of settlement of the dispute

330. With respect to Article 38, which provides that, "without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute", it should be noted that the Council is empowered to make recommendations which are not necessarily limited to disputes the continuance of which is likely to endanger the maintenance of international peace and security.

453/ In considering the role played by the Security Council in pacific settlement in the course of application of Article 37, it is necessary to mention that the application of the Article is closely related to the application not only of Article 36, but also of other Articles of Chapter VI of the Charter, namely, Articles 33, 34 and 35 (see ibid., Second Year, No. 59, 159th meeting, document S/410, pp. 1343-1345; ibid., Third Year, No. 115, 364th meeting, p. 36).

454/ See Repertory of Practice of the United Nations Organs, Supplement No. 2, vol. II, Articles 9-54 of the Charter, pp. 406 and 407.

455/ Official Records of the Security Council, Twelfth Year, Supplements for January, February and March 1957, document S/3793, p. 9. For the text of S/3779, see ibid., p. 4.

456/ Official Records of the Security Council, Eleventh Year, 743rd meeting, para. 106.

331. Articles 33 to 37 deal with disputes the continuance of which are likely to endanger the maintenance of international peace and security, while Article 38 gives the Security Council the power to make recommendations with respect to "any dispute" if "all the parties" so request. However, the practice shows that States have tended not to make such a request under Article 38. 457/

332. Nevertheless, in future, the possibility of more frequent recourse by States to Article 38 cannot be excluded in view of the new demands facing the international community and the United Nations in the field of the prevention and pacific settlement of disputes. This can be expected, for example, in connection with the application of the provisions of the Manila Declaration on the Peaceful Settlement of International Disputes which, inter alia, reaffirms the need to exert utmost efforts in order to settle any conflicts and disputes between States exclusively by peaceful means. The same can be expected in the application of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, which, provides in its paragraph 1 (5) that "States concerned should consider approaching the relevant organs of the United Nations in order to obtain advice or recommendations on preventive means for dealing with a dispute or situation".

(c) Relation to procedures under regional agencies or arrangements

333. In addition to Chapter VI of the Charter, which deals directly with the pacific settlement of disputes, provisions relevant to the role of the Security Council in the field of peaceful settlement are found also in Chapter VIII, concerning "Regional arrangements". 458/

334. According to Article 52, paragraph 3, of the Charter, the Security Council "shall encourage the development of pacific settlement of local disputes" through "regional arrangements" or by "regional agencies" either "on the initiative of the States concerned" or "by reference from the Security Council". Under paragraph 2 of the same Article it is provided that the Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council. Thus, as

---

457/ There are instances in which the point was raised in incidental statements as to whether the Security Council, having been seized of the question at the request of both parties and having based recommendations on consultations by the President of the Council with the representatives of the parties, had been performing the functions under Article 38; e.g., during the consideration of the India-Pakistan question; see ibid., Third Year, Nos. 16-35, 245th meeting, pp. 115 and 116 and ibid., No. 74, 304th meeting, p. 21.

458/ Resort to regional agencies or arrangements for the purpose of pacific settlement of disputes is considered in detail in Chapter II, section H, of the present handbook.

analysed in chapter II, section H, above, some States members of certain regional agencies have taken the position that local disputes should first be tried through the mechanism of the relevant regional agency, while others have maintained the view that local disputes to which they are parties should be handled directly by the Security Council.

335. The practice of application of Chapter VIII, under its Article 54, is that the Security Council is kept informed of activities undertaken or in contemplation by regional organizations through communications addressed to the United Nations Secretary-General, from the Secretary-General of the respective regional organizations 459/ and from States parties to a dispute or situation. 460/

2. Recent trends

336. Some of the international instruments recently adopted by the Organization reflect the ongoing process of positive changes in international relations and the growing awareness of the interdependence of States, indicating the trend to add new significance to the efforts of the United Nations in the area of prevention and peaceful settlement of international disputes and to enhance the effectiveness of the role of the Security Council in this field.

337. Thus, in the 1982 Manila Declaration on the Peaceful Settlement of International Disputes, the General Assembly called upon Member States to strengthen "the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security" (sect. II, para. 4). The Declaration stressed the need to consider "making greater use of the fact-finding capacity of the Security Council in accordance with the Charter" (sect. II, para. 4 (d)); encouraged the Council "to make wider use, as a means to promote peaceful settlement of disputes, of the subsidiary organs established by it in the performance of its functions under the Charter" (sect. II, para. 4 (e)) and "to act without delay, in accordance with its functions and powers, particularly in cases where international disputes develop into armed conflicts" (sect. II, para. 4 (g)).

338. Some of the principles in the 1982 Manila Declaration have been further specified in the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, which addressed both States and the United Nations organs.

459/ See, e.g., Repertory of Practice of United Nations Organs, Supplement No. 4, vol. I, Articles 1-54 of the Charter, Annex, Tabulation of communications, sects. A and B, p. 416.

460/ Ibid., sect. C, pp. 416 and 417.

339. Thus, the General Assembly in the 1988 Declaration called upon States parties to a dispute or directly concerned with a situation, particularly if they intended to request a meeting of the Security Council, to approach the Council, "directly or indirectly, at an early stage and, if appropriate, on a confidential basis" (para. 1 (6)). An emphasis on the necessity to approach the Council at an early stage and on a confidential basis (if appropriate) reflects the need to develop the preventive abilities and potentials of the Council and enhances its effectiveness through informal, confidential contacts with the States concerned.

340. A need for the improvement of monitoring capacities of the Security Council, for the purposes of prevention, on the basis of regular interaction with high-level governmental structures of the States in respect of international situations is formulated by the Declaration in its call addressed to the Security Council to "consider holding from time to time meetings, including at a high level with the participation, in particular, of Ministers of Foreign Affairs, or consultations to review the international situation and search for effective ways of improving it" (para. 1 (7)).

341. Special attention is given to preparations for the prevention or removal of particular disputes or situations. For this purpose, the Security Council is urged to "consider making use of the various means at its disposal, including the appointment of the Secretary-General as rapporteur for a specified question" (para. 1 (8)).

342. The Declaration also outlines procedures and actions of the Security Council in cases when disputes or situations are brought to its attention "without a meeting being requested". Such procedures include "holding consultations with a view to examining the facts of the dispute or situation and keeping it under review, with the assistance of the Secretary-General when needed" and granting the States concerned "the opportunity of making their views known" (para. 1 (9)). In respect of such consultations, the Declaration again stresses the necessity of wider use of informal, confidential procedures, stating that "consideration should be given to employing such informal methods as the Security Council deems appropriate, including confidential contacts by its President" (para. 1 (10)).

343. Furthermore, the Declaration suggests to the Security Council, in connection with particular disputes or situations to "consider, *inter alia*:

> "(a) Reminding the States concerned to respect their obligations under the Charter;
>
> "(b) Making an appeal to the States concerned to refrain from any action which might give rise to a dispute or lead to the deterioration of the dispute or situation;
>
> "(c) Making an appeal to the States concerned to take action which might help to remove, or to prevent the continuation or deterioration of, the dispute or situation" (para. 1 (11)).

344. Stressing again the preventive functions of the United Nations activities in this field, the Declaration formulates "means of preventing" the further "deterioration of the dispute or situation in the areas concerned" which the Security Council should consider, namely "sending, at an early stage, fact-finding

or good offices missions or establishing appropriate forms of United Nations presence" (para. 1 (12)).

345. The Security Council's responsibility for promoting resort to regional agencies or arrangements also was not omitted by the Declaration, which indicated the Council's obligation to consider "encouraging and, where appropriate, endorsing efforts at the regional level by the States concerned or by regional arrangements or agencies to prevent or remove a dispute or situation in the region concerned" (para. 1 (13)).

346. Once again the balance between the right of States to settle their disputes on the basis of the principle of free choice of means of settlement and the Security Council's responsibility in the field of pacific settlement was reaffirmed: "Taking into consideration any procedures that have already been adopted by the States directly concerned, the Security Council should consider recommending to them appropriate procedures or methods of settlement of disputes or adjustment of situations, and such terms of settlement as it deems appropriate" (para. 1 (14)).

347. The Declaration emphasized once more the existing distribution of competence between the Security Council and the International Court of Justice in this area, drawing attention to the role played by the Council in the promotion of settlement on the basis of judicial procedures: "The Security Council, if it is appropriate for promoting the prevention and removal of disputes or situations, should, at an early stage, consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question" (para. 1 (15)). It should be noted in this respect that the necessity of appropriate actions "at an early stage" was stressed once again, clearly indicating the growing emphasis on preventive functions of the United Nations in this field.

348. New trends in the practice of the Security Council are also reflected in the 1989 and 1990 reports of the Secretary-General on the work of the Organization. 461/ The reports contain a review of the latest multilateral efforts of the Council in this field, emphasizing the strong support given by the Council's resolutions to the peace process in various regions of the world. They point out the regular interaction between the Security Council and the Secretary-General and the fact that the latter has frequently been encouraged to continue to lend his good offices on the basis of the mandate entrusted to him by the Council. They also mention attempts to pave the way to an effective negotiating process, which included repeated contacts and consultations by the Secretary-General at the highest level with the parties directly concerned and with the permanent members of the Council, and urgent meetings of the Council at the request of the Secretary-General.

461/ See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 1 (A/44/1); and ibid., Forty-fifth Session, Supplement No. 1 (A/45/1).

349. As stated in the 1989 report:

> "Efforts to prevent possible conflicts, reduce the risk of war and achieve definitive settlements of disputes, whether long-standing or new, are part and parcel of a credible strategy for peace.
>
> "The United Nations needs to demonstrate its capacity to function as guardian of the world's security. Neither any alterations in the structure of the Organization nor in the distribution of competence among its respective organs are needed for that purpose. What is needed is an improvement of existing mechanisms and capabilities in the light of the demands of the unfolding international situation."

In this connection, the Secretary-General stresses the necessity of prevention of international disputes, indicates the priorities for the United Nations and formulates concrete proposals aimed at enhancing its effectiveness in the modern world.

350. The 1989 report contains a number of proposals concerning the procedure of the Security Council, as well as the improvement of its mechanism of work, in dealing with matters of prevention and pacific settlement of disputes and situations. Among the proposals are those suggesting that the Security Council could meet periodically to consider the state of international peace and security in different regions at the level of ministers for foreign affairs and, when appropriate, in closed session, and that "where international friction appears likely", the Council "could act on its own or request the Secretary-General to exercise his good offices directly or through a special representative", enlisting, when appropriate, "the cooperation of the concerned regional organization in averting a crisis".

351. Evaluating the recent positive development of positions of Member States and permanent members of the Council, especially in respect of the role of the United Nations and the Security Council, the Secretary-General mentioned, in particular in his 1989 report, that "the decision-making process on political matters has vastly improved with the emergence of a collegial spirit among the permanent members of the Security Council and with the daily cooperation between the Council as a whole and the Secretary-General". He also noted the special significance of the cooperation between "the two militarily most powerful States" for the purposes of the maintenance of international peace and security for the effectiveness of the efforts of the United Nations in this field. At the same time, the Secretary-General reaffirmed in his 1990 report that "agreement among the major Powers must carry with it the support of a majority of Member States if it is to make the desired impact on the world situation". That is fully applicable to the field of peaceful settlement of disputes between States.

C. The General Assembly

1. Role of the General Assembly in the peaceful settlement of disputes

352. The functions and powers of the General Assembly in the field of prevention and settlement of disputes and situations are specified mainly in Chapter IV of the Charter. Under the various Articles of the Chapter, the Assembly is empowered, *inter alia*: to discuss any questions or matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter, including those relating to the maintenance of international peace and security which have been brought before it by Member States or by the Security Council, and may make recommendations on such questions or matters; 462/ to call the attention of the Council to situations which are likely to endanger international peace and security; 463/ to consider the general principles of cooperation in the maintenance of international peace and security and make recommendations with regard to such principles; 464/ to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification; 465/ and to recommend measures for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly relations among nations. 466/ Some instances in which the General Assembly has exercised these powers and functions in the field of the prevention and peaceful settlement of disputes and situations are outlined below.

(a) Discussion of questions and making recommendations on matters relating to the peaceful settlement of disputes

353. The General Assembly, under Article 10 of the Charter, may discuss any questions or any matters within the scope of the Charter, or relating to the powers and functions of any organs provided for in the Charter, and may make recommendations "to the Members of the United Nations or to the Security Council or to both" on any such questions or matters, "except as provided in

---

462/ See the Charter of the United Nations, Articles 10 and 11, paragraph 2; see also the limitation imposed on the power of the General Assembly to make recommendations by Article 12, paragraph 1.

463/ Ibid., Article 11, paragraph 3.

464/ Ibid., paragraph 1.

465/ Ibid., Article 13.

466/ Ibid., Article 14.

Article 12". 467/ The powers of the Assembly as thus stated in Article 10 include the power to discuss and make recommendations on questions relating to the settlement of disputes. The Charter authorizes the Assembly not only to address directly the States parties involved in a dispute or situation, but also to play an important role in the coordination of the activities of the principal organs of the United Nations in the field of the prevention and peaceful settlement of disputes and situations, but within the limits established by the Charter in Article 12.

354. While the general powers and functions of the Assembly are thus contained in Article 10, they are specified further under Articles 11, 13 and 14, as indicated below.

355. Article 11, paragraph 2, enables the General Assembly to discuss any questions relating to the maintenance of international peace and security brought before it 468/ and to make recommendations with regard to them "to the State or States concerned or to the Security Council or to both". According to Article 11, paragraph 3, the Assembly may call the attention of the Council to situations "which are likely to endanger international peace and security". The Assembly has

---

467/ Article 12 of the Charter reads as follows:

> "1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
>
> "2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Secretary-General ceases to deal with such matters."

468/ According to the provisions of Article 11, paragraph 2, any question related to the maintenance of international peace and security may be brought before the General Assembly not only by any Member of the United Nations, or by the Security Council, but also by a State which is not a Member of the United Nations, if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the Charter, as stated in Article 35, paragraph 2.

widely exercised these specific powers, adopting a number of resolutions 469/ in which it has made recommendations in the field of the maintenance of international peace and security or drawn the attention of the Security Council to situations considered as endangering, or likely to endanger, international peace and security, and referring to the Council, either before or after discussion, any such question on which action is necessary.

356. This mechanism of distribution of competence between the Security Council and the General Assembly and interaction of the two organs, as envisaged in Article 11, paragraphs 1 to 3, of the Charter, is to be viewed in the light of the broad powers of the General Assembly, under article 10, to perform functions in the field of the maintenance of international peace and security and prevention and pacific settlement of disputes and situations. It is therefore essential to keep in mind Article 11, paragraph 4, which provides that the powers of the General Assembly set forth in the Article "shall not limit the general scope of Article 10". 470/ Besides, any such limitation would have to be lifted by the Security Council itself if it adopted a resolution requesting the General Assembly to make recommendations with respect to a particular dispute or situation.

357. With respect to the distribution of competence between the two organs, it is important to note the procedure under which the General Assembly is to be informed of the matters being dealt with by the Security Council or with which the Council has ceased to deal. This procedure, as provided in Article 12, establishes a system of notification of the activities of the Security Council and the General Assembly in this field in order to avoid unnecessary overlapping of their functions.

358. With respect to the question of the correlation between the primary responsibility of the Security Council in the maintenance of international peace and security and the powers of the General Assembly to discuss any questions relating to the maintenance of international peace and security and to make recommendations with regard to any such questions, it is necessary to mention, as an example, the establishment by the Assembly, in 1947, 471/ of the Interim Committee and the adoption of the "Uniting for peace" resolution.

469/ See, for instance, General Assembly resolutions 2151 (XXI), para. 6; 2202 A (XXI), para. 7; 2262 (XXII), para. 17; 2270 (XXII), para. 10; 2307 (XXII), para. 4; 2324 (XXII), para. 4; 2383 (XXIII), para. 9; 2395 (XXIII), para. 4; 2396 (XXIII), para. 4; 2403 (XXIII), para. 3; 2498 (XXIV), para. 3; 2506 B (XXIV), para. 9; 2508 (XXIV), paras. 12 and 14; and 2517 (XXIV), para. 4. For more recent examples, see resolutions 43/14, 43/19, 43/24, 43/25, 43/33, 44/10, 44/15, 44/22, 44/88, etc.

470/ The same interpretation appears relevant also to the exceptions contained in Article 14 and in Article 35, paragraph 3.

471/ See Official Records of the General Assembly, Second Session, First Committee, 97th meeting, p. 335.

359. The mandate of the Interim Committee was to assist the General Assembly between its sessions in handling disputes and situations brought to the Assembly, in case the Security Council was unable to take action because of the use of the veto. The Committee was to assist the Assembly in preparing studies and making recommendations for international political cooperation according to Article 11, paragraph 1, and Article 13, paragraph 1 (a), and dealing with disputes or situations. 472/ The General Assembly, for example, took some actions on the basis of the report of the Interim Committee, and in one case addressed a recommendation to the Security Council concerning the possible use of the rapporteur system, 473/ and decided to revise the 1928 Geneva General Act for the Pacific Settlement of International Disputes and to establish a panel for inquiry and conciliation 474/ (which has never been used).

360. Another step in the same direction was the adoption of the "Uniting for peace" resolution, in 1950, which gave rise to one of the most extensive debates on the Charter of the United Nations. 475/ In that resolution (resolution 377 (V) of 3 November 1950), the Assembly

> "Resolve[d] that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security."

The resolution also "establishes a Peace Observation Commission ... which could observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security" and "recommends to the States Members of the United Nations that each member maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes, for service as a United Nations unit or units, upon recommendation by the Security Council or the General Assembly". The resolution further establishes a Collective Measures Committee "to study and make a report to the Security Council and the General Assembly ... on methods ... which might be used to maintain and strengthen international peace and security".

472/ See General Assembly resolution III (II) of 13 November 1947.

473/ See General Assembly resolution 268 (III) B of 28 April 1949.

474/ See General Assembly resolutions 268 (III) A and D of 28 April 1949.

475/ See Official Records of the General Assembly, Fifth Session, First Committee, 354th to 371st meetings, 9-21 October 1950; ibid., 299th and 302nd plenary meetings, 1-3 November 1950.

There are cases in which the Security Council, in exceptional circumstances, when it has been prevented from exercising its primary responsibility for the maintenance of international peace and security owing to the lack of unanimity of its permanent members, has decided to call emergency special sessions of the General Assembly to consider the matter. In one case, the Security Council specifically invoked the "Uniting for peace" resolution, 476/ while in another it did not invoke the resolution as such but applied the same procedure of convening an emergency special session of the General Assembly. 477/

(b) Recommendation of measures for the peaceful adjustment of situations

361. The specific functions of the General Assembly under this heading are described in Article 14 of the Charter. Under that Article, the Assembly has the power to recommend measures for the peaceful adjustment, not only in respect of matters relating to the maintenance of international peace and security, but also in respect of other matters, and any situations, regardless of origin, "which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations". The Article was intended to enable the General Assembly to make recommendations for the peaceful adjustment of situations in various areas, such as the self-determination of peoples and human rights. 478/

362. One of the early examples of the application of Article 14 occurred in connection with the question of the treatment of Indians in the Union of South Africa, which was included in the agenda of the first session of the General Assembly on the request of the delegation of India. 479/ This resulted in the adoption by the General Assembly of its resolution 44 (I) of 8 December 1946, entitled "Treatment of Indians in the Union of South Africa", in which the Assembly observed that because of that treatment friendly relations between the two Member States had been impaired and that unless a satisfactory settlement was reached the relations between the States concerned were likely to be further impaired. 480/

476/ See, e.g., Security Council resolution 119 (1956) of 31 October 1956; see also General Assembly resolution 997 (ES-I) of 2 November 1956.

477/ See, e.g., Security Council resolution 500 (1982) of 28 January 1982. See also General Assembly resolution ES-9/1, 28 January 1982.

478/ See, for instance, Repertory of Practice of United Nations Organs, vol. I, Articles 1-22 of the Charter, 1955, pp. 465-480.

479/ Official Records of the General Assembly, First Session, Second Part, Joint Committee of the First and Sixth Committees, annex 1, document A/149.

480/ General Assembly resolution 44 (I), para. 1.

2. Recent trends

363. The trends in the practice of the General Assembly, reflected in its recent declarations, 481/ clearly indicate an emphasis not only upon removal of disputes and situations likely to endanger international peace and security, but primarily upon their prevention.

364. Like the 1982 Manila Declaration, the 1988 Declaration stresses the importance of the timely prevention of disputes and situations and urges States to consider approaching the relevant organs of the United Nations (including the General Assembly) "in order to obtain advice or recommendations on preventive means for dealing with a dispute or situation" (para. 1 (5)), stressing the need to consider, where appropriate, supporting efforts undertaken at the regional level by the States concerned or by regional arrangements or agencies, to prevent or remove a dispute or situation in the region concerned. This clearly indicates the important role of the General Assembly in providing the interaction between universal and regional systems in the prevention and removal of disputes and situations.

365. Furthermore, the 1988 Declaration attaches special attention also to the promotion of the use of fact-finding, urging the General Assembly in the case when a dispute or situation has been brought before it to consider "including in its recommendations making more use of fact-finding capabilities, in accordance with Article 11 and subject to Article 12 of the Charter" (para. 1 (18)), and calls upon the Assembly to "consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question" (para. 1 (19)), and thus to contribute to the enhancement of the role of the Court.

366. The important role of the General Assembly as a principal organ of the United Nations in the field of the prevention and pacific settlement of international disputes and situations is further indicated in the 1989 and 1990 reports of the Secretary-General on the work of the Organization. 482/ Noting the valuable efforts of the General Assembly in various areas of international relations, including those concerning the promotion of pacific settlement of disputes, as well as his own activities in the field, in pursuance of the mandate entrusted to him by the Assembly, the Secretary-General has underlined the growing demand for the

---

481/ Manila Declaration on the Peaceful Settlement of Disputes (*supra*, para. 2) and Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (ibid.). It should be noted also that in the effort to encourage States to settle their disputes by peaceful means, the General Assembly adopted a decision on resort to a commission of good offices, mediation or conciliation within the United Nations (decision 44/415).

482/ See *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 1* (A/44/1); and ibid., *Forty-fifth Session, Supplement No. 1* (A/45/1).

effective conduct of multilateral diplomacy on the basis of political and moral persuasion, combined with a judicious use of leverage aimed at the settlement of disputes. In this respect, it should be noted that the General Assembly, as the organ in which all Member States are represented, is capable of performing this task on the basis of the multilateral efforts of all the Member States in directing their combined political will, inseparable from their moral responsibility, to undertake the timely prevention and peaceful settlement of international disputes.

D. The Secretariat

1. Role of the Secretary-General

367. The contribution of the Secretariat of the United Nations to the efforts of the Organization in the area of the peaceful settlement of disputes is made primarily through the role of the Secretary-General. Article 97 of the Charter of the United Nations provides that "the Secretariat shall comprise a Secretary-General and such staff as the Organization may require" and describes the Secretary-General as "the chief administrative officer of the Organization". Article 98, however, establishes the duty of the Secretary-General to act not only in that capacity, but also to perform such other functions as are entrusted to him by the other principal organs, which may include those in the field of the prevention and peaceful settlement of disputes. Article 99 gives the Secretary-General more specific powers in connection with the prevention and peaceful settlement of disputes by providing that "the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security".

(a) Functions of the Secretary-General in the implementation of the resolutions of other principal organs in the field of the prevention or settlement of disputes

368. The Secretary-General, within the framework of the Charter of the United Nations and the means at his disposal, renders assistance and provides facilities not only for the other principal organs of the Organization but also for all institutions of the United Nations acting in this field. 483/ In that connection, and pursuant to Article 98, he performs technical and any other functions as may be requested by the other principal organs directly involved in the prevention and peaceful settlement of disputes.

369. A review of the functions of the Secretary-General in the field of the maintenance of international peace and security and the prevention and settlement of international disputes shows that he has performed manifold actions to implement

---

483/ In this connection see, for example, the coordination of the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in various situations of conflict where assistance to the civilian population is needed.

a vast number of resolutions of other principal organs. 484/ These include, for example, his activities with regard to the situation in the Middle East, 485/ the situation in Cyprus, 486/ the situation between Iran and Iraq, 487/ the situation in Kampuchea, 488/ the situation in Afghanistan, 489/ Western Sahara, 490/ and Central America, 491/ and his role in the efforts to settle the Falkland Islands (Malvinas) question 492/ and in the settlement of the question of Namibia. 493/

370. In performing this function in the course of the prevention or peaceful settlement of disputes, the Secretary-General has either taken certain actions himself, appointed special representatives or requested the assistance of a third State. For example, in April 1965, when fighting broke out in the Dominican Republic, he requested the United States Government to use its good offices to urge

---

484/ These functions were discussed in chapter II of the handbook. See, for example, section C, on "Good offices".

485/ See the 1989 and 1990 reports of the Secretary-General on the work of the Organization (*supra*, note 482).

486/ See *Official Records of the Security Council, Nineteenth Year, Supplement for January, February and March 1964*, document S/5516, paras. 4-6; see also, e.g., Security Council resolutions 186 (1964) of 4 March 1964 and 649 (1990) of 12 March 1990, both on the Cyprus question; as well as documents S/20310 and Add.1 and S/20330.

487/ See, e.g., Security Council resolutions 540 (1983) of 31 October 1983 and 598 (1987) of 20 July 1987.

488/ See General Assembly resolutions 43/19 of 3 November 1988 and 44/22 of 16 November 1989.

489/ See document S/19835, as well as General Assembly resolution 44/15 of 1 November 1989.

490/ See General Assembly resolutions 43/33 of 22 November 1988 and 44/88 of 11 December 1989, as well as Security Council resolution 621 (1988) of 20 September 1988.

491/ See General Assembly resolution 43/24 of 15 November 1988 and document A/44/140, as well as Assembly resolution 44/10 of 23 October 1989 and Security Council resolution 650 (1990) of 27 March 1990.

492/ See General Assembly resolution 43/25 of 17 November 1988.

493/ See General Assembly resolutions 42/14 B of 6 November 1987 and 43/26 A of 17 November 1988, as well as Security Council resolution 643 (1989) of 31 October 1989.

the opposing forces to heed the call of the Security Council for a strict cease-fire. 494/ In connection with the complaint by Malta against the Libyan Arab Jamahiriya (1980), the Secretary-General held consultations with the parties and sent his Special Representative to the countries concerned in order to assist in the search for a mutually acceptable solution. 495/

(b) Diplomatic functions

371. Since the Secretary-General is the chief administrative officer of the Organization, which gives wide-ranging powers to the Charter in the field of peaceful settlement of disputes, it follows naturally that he plays an important role in this process. Such functions include: communications containing démarches and appeals; discussions and consultations with the parties; fact-finding activities; participation in, or assistance to negotiations aimed at the settlement of a dispute or the implementation of an agreed settlement. All such functions are performed either by him directly or by personal or special representatives appointed by him. 496/

(c) Functions of the Secretary-General based on the powers expressly conferred upon him by the Charter

372. According to Article 98 of the Charter, the Secretary-General "shall make an annual report to the General Assembly on the work of the Organization". 497/ The most recent such annual report of the Secretary-General is that submitted to the General Assembly at its forty-fifth session. 498/ In that document, in addition to presenting a comprehensive review of various activities of the Organization and an evaluation of its work in the field of the maintenance of international peace and security, the Secretary-General also suggests ways and means by which the functions

---

494/ See Official Records of the Security Council, Twentieth Year, Supplement for April, May and June 1965, documents S/6365 and annex, and S/6369.

495/ See Official Records of the Security Council, Thirty-fifth Year, Supplement for October, November and December 1980, documents S/14228, S/14229 and S/14256.

496/ See Repertory of Practice of United Nations Organs, Supplement No. 3, vol. IV, Articles 97-101 of the Charter, 1973, pp. 145-152; see also A/44/959, S/21274, A/44/344/Add.1, S/20699/Add.1, A/44/886, S/21029; and Official Records of the General Assembly, Forty-fifth Session, Supplement No. 1 (A/45/1).

497/ Rule 48 of the Rules of procedure of the General Assembly (United Nations publication, Sales No. E.85.I.13) provides that the Secretary-General shall also make "such supplementary reports as are required".

498/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 1 (A/45/1).

of the Organization may be improved, for example, in the area of the prevention and peaceful settlement of international disputes. Such a reporting system enables the Secretary-General to contribute to the process of achieving the peaceful solution of conflicts or situations in various regions of the world 499/ in the course of implementing the various resolutions of the other principal organs.

373. The competence given to the Secretary-General under Article 99 has mainly been used by him in the sphere of the maintenance of peace and security, rather than in the peaceful settlement of disputes. His functions in the field of the prevention and peaceful settlement of disputes are provided in this Article, under which the Secretary-General "may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security". However, such competence of the Secretary-General has also been effectively used for purposes of the peaceful settlement of disputes. The importance of this competence is underlined by further mention that was given to Article 99 in the 1982 Manila Declaration and in the 1983 annual report of the Secretary-General on the work of the Organization, 500/ in which he stressed the need "to carry out effectively the preventive role foreseen for the Secretary-General under Article 99", in order to "inhibit the deterioration of conflict situations" and to assist the parties "in resolving incipient disputes by peaceful means".

374. The Secretary-General's activities performed under Article 99 can be illustrated by his action with regard to the situation between Iran and Iraq in 1980. 501/ Among the more recent examples is his action in connection with the situation in Lebanon. On 15 August 1989, after an alarming escalation in the military confrontation in and around Beirut, and with the danger of even further involvement of outside parties, the Secretary-General requested the President of the Security Council to convene an urgent meeting of the Council, in view of the serious threat to international peace and security. 502/

499/ See A/44/344/Add.1 and S/20699/Add.1, as well as A/44/642 and A/45/436/Add.1.

500/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 1 (A/37/1), p. 3.

501/ See Official Records of the Security Council, Thirty-fourth Session, Supplement for October, November and December 1979, document S/1346; ibid., Thirty-fifth Session, Supplement for July, August and September 1980, document S/14196.

502/ See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 1 (A/44/1).

2. Recent trends

375. The instruments in the field of the peaceful settlement of disputes adopted by the international community recently, reflecting the realities of modern international life, clearly indicate the trend towards enlarging the role of the Secretary-General in the area of the prevention and peaceful settlement of international disputes.

376. As stated, for example, in the 1982 Manila Declaration on the Peaceful Settlement of International Disputes: "The Secretary-General should make full use of the provisions of the Charter of the United Nations concerning the responsibilities entrusted to him" (sect. II, para. 6).

377. The functions of the Secretary-General in this field are also stated in the 1988 Declaration on the Prevention and Removal of Disputes and Situations:

> "20. The Secretary-General, if approached by a State or States directly concerned with a dispute or situation, should respond swiftly by urging the States to seek a solution or adjustment by peaceful means of their own choice under the Charter and by offering his good offices or other means at his disposal, as he deems appropriate;
>
> "21. The Secretary-General should consider approaching the States directly concerned with a dispute or situation in an effort to prevent it from becoming a threat to the maintenance of international peace and security."

These provisions emphasize the role of the Secretary-General in taking preventive actions in the field of pacific settlement.

378. The 1988 Declaration thus urges him, where appropriate, to consider making full use of fact-finding capabilities, including sending, with the consent of the State, a representative or a fact-finding mission to areas where a dispute or a situation exists. It further encourages him to consider using, at as early a stage as he deems appropriate, the right conferred upon him under Article 99 of the Charter, thus calling the attention of the Security Council to any matter which in his opinion may threaten the maintenance of international peace and security. Moreover, under the 1988 Declaration the Secretary-General is also encouraged to make efforts towards the prevention and removal of disputes or situations at the regional level and to establish an effective mechanism for collaboration between regional agencies and the United Nations in dealing with local disputes or situations.

379. New trends and proposals in connection with the role of the Secretary-General in the area of pacific settlement as well as an evaluation of past and present activities in the field are also reflected in the report submitted by the Secretary-General to the General Assembly at its forty-fourth session, in 1989. In particular, the Secretary-General pointed out that the deployment of the United Nations military observers throughout the Central American region could provide a new opportunity to render assistance in the field of pacific settlement and reconciliation; set forth proposals that the Organization receive information from space-based and other technical surveillance systems, thereby enabling the Secretariat to monitor conflict situations impartially; and recommended that the Security Council meet periodically to consider the state of international peace and security in different regions at the level of foreign ministers. He also noted the

important role of "fact-finding teams" which might be dispatched to establish "timely, accurate and unbiased information" concerning a situation likely to lead to international friction.

380. Reaffirming the evaluation of recent trends and proposals in the field of peaceful settlement contained in his 1989 report on the work of the Organization, the Secretary-General in his 1990 report specially emphasized the role of the peace-keeping efforts of the United Nations in the context of the peaceful settlement of disputes and situations. In that connection, he pointed out as examples of recent trends both the expansion of the role of the United Nations and the widening United Nations practice of combining peace-keeping and peace-making, noting that recent United Nations operations

> "... have so combined elements of peace-keeping and peace-making as to have radically altered traditional concepts of the arrangement between the two. Formerly, peace-keeping was understood to mean essentially to control or contain conflicts while peace-making was meant to resolve them. A deeper and more active involvement of the United Nations has over time, however, increasingly shown that peace-making itself determines, as it should, the size, scope and duration of peace-keeping as conventionally understood and that it is often by a fusion of the two in an integral undertaking that peace can genuinely be brought to troubled areas".

The report also pointed out that:

> "From 1948 onwards, the United Nations has launched 18 operations, five of them during 1988 and 1989. Indeed, in recent years, the Organization's role in combinations of peace-keeping and peace-making has expanded impressively. The composite nature of these recent operations means that the tasks assigned to them have multiplied. The United Nations Transition Assistance Group in Namibia provides a standing example of important civilian and police components working together with military elements to secure the implementation of a complex peace plan under its supervision and control. The delicate mission accomplished in Nicaragua also illustrated the versatile forms that undertakings assigned to the Secretariat by the competent organs of the United Nations can take."

381. The Secretary-General also indicated that as the consent of the parties concerned is crucial to the mandate of the United Nations, peace-keeping operations conducted "in order to stop or avert fighting and help facilitate or implement a settlement" are "to be distinguished from measures under Chapter VII of the Charter". While recognizing the unique and important role of the Secretary-General in the prevention and peaceful settlement of international disputes and situations, it is necessary to emphasize once again that its potential can be used effectively only on the basis of interaction with other principal organs of the United Nations, especially the Security Council and the General Assembly, and under the condition of full support by States.

IV. PROCEDURES ENVISAGED IN OTHER INTERNATIONAL INSTRUMENTS

A. Introduction

382. The international instruments whose procedures for the settlement of disputes are the subject of the present chapter may be divided into two broad categories, as briefly described below.

383. One category consists of the constituent instruments of international organizations of a universal character, such as the specialized agencies of the United Nations and the International Atomic Energy Agency (IAEA), with competence in specific areas of activities. Disputes between any of the States members of such organizations are settled in accordance with the procedures established under the relevant constituent instruments. As further discussed in section B below, certain instruments provide more elaborate procedures for dispute settlement consistent with the degree of interaction of the Member States *inter se*, as determined by the nature of the activities of the organization. Other constituent instruments do not, by contrast, establish elaborate procedures and mechanisms for dispute settlement apart from the general requirement that disputes which are not settled by direct negotiations or by other diplomatic means should be referred to one of the organs of the organization in question for settlement, and that if no settlement is reached the dispute may be referred to a particular forum for a judicial settlement.

384. The second category consists of the numerous multilateral treaties which regulate the relations between States parties thereto and establish appropriate procedures for the settlement of disputes arising from their interpretation or application.* Depending upon the subject-matter of each multilateral treaty, and as further discussed in section C of the present chapter, the dispute settlement procedures established under such instruments also rely upon the application of the various means of peaceful settlement discussed in chapter II of the handbook.

385. In presenting the materials under the two broad categories of the types of instruments described above, the present chapter aims at providing an analysis of dispute settlement procedures envisaged under the instruments, taking into account those already discussed in the preceding chapters and, where possible, giving examples of cases handled through the procedures in question.

B. Procedures envisaged in the constituent instruments of international organizations of a universal character other than the United Nations

386. The procedures for the settlement of disputes envisaged under the instruments falling under this category reflect the distinction between the instruments which created economic or financial organizations and those which established organizations with other specific areas of activities and competence.

---

* While for the purposes of the present handbook only multilateral treaties are discussed in the present chapter, a study of the equally large number of bilateral treaties indicates that the types of dispute settlement procedures they contain are fully reflected in those presented here or elsewhere in the handbook.

1. Procedures envisaged in economic and financial organizations

387. The disputes settlement procedures under the General Agreement on Tariffs and Trade (GATT) and under commodity agreements provide examples of the ways in which some of the specific peaceful means of dispute settlement discussed in chapter II above are adapted to deal with the types of disputes arising within the scope of the activities of the institutions in question.

388. The GATT dispute settlement procedure 503/ consists of several steps, the first of which is consultations, which are mainly bilateral, although article XXII, paragraph 2, of the General Agreement provides for joint consultations with contracting parties if bilateral consultations do not produce a satisfactory result. Under this system, consultations are undertaken as means of settlement of disputes in itself and are considered a precondition for conciliation as the next procedure established under such international economic organizations. 504/

389. The second step is the referral of the dispute, on the basis of article XXIII, paragraph 2, of the Agreement, to the Contracting Parties 505/ for conciliation. A party to a dispute may request the setting up of a panel or working party. In practice, recourse to panels has become the usual procedure (see paras. 392-395).

390. Recourse to this conciliation procedure is limited to cases where a contracting party considers "that any benefit accruing to it directly or indirectly under th[e] Agreement is being nullified or impaired". 506/ Nullification or impairment of benefits is presumed in cases where there is a breach of obligations under the General Agreement. In the absence of such a breach, the party claiming

---

503/ This procedure is essentially based on articles XXII and XXIII of the Agreement (Basic Instruments and Selected Documents, vol. IV, March 1969) as well as in the following subsequent documents, which formalized the dispute settlement procedures that had evolved through GATT customary practice: "Understanding regarding notification, consultation, dispute settlement and surveillance", adopted on 28 November 1979 (hereinafter "1979 Understanding"), to which is annexed an "Agreed description of the customary practice of the GATT in the field of dispute settlement"; GATT, BISD, 26th Supp. (1980), pp. 210-18; "Special régime for disputes in which the plaintiff is a developing country", adopted on 5 April 1966 (GATT, BISD, Doc., 14th Suppl. (1966), pp. 18-20, which provides for the expedited treatment of complaints brought by developing countries; Special régimes provided for in some of the non-tariff agreements or Codes concluded during the Tokyo Round of multilateral trade negotiations of 1973-1979 which differ slightly from the 1979 Understanding: under the Codes, parties have an explicit right to panel procedures and certain Codes establish stricter deadlines; finally, the 1982 GATT Ministerial Declaration (GATT, BISD, 29th Suppl., 9, pp. 13-16) provides for certain ways of expediting the process.

504/ 1979 Understanding (supra, note 492), para. 8, and annex thereto, para. 1.

505/ The use of initial capitals in "Contracting Parties" indicates collective action by the Parties to GATT, performed by the GATT Council.

506/ Article XXIII of the Agreement.

nullification or impairment of benefit is called upon to provide detailed justification of such a claim. 507/

391. The 1982 Ministerial Declaration provides that before the matter is referred to the Contracting Parties and without prejudice of the right of the parties to do so, the latter can seek the good offices of the Director-General of GATT to facilitate a confidential conciliation. 508/

392. Although the establishment of a panel is not an automatic right of the requesting party, 509/ it has never been refused. Panels are composed of three to five members, preferably governmental representatives, but serving in their individual capacity. As opposed to traditional conciliation commissions in the political field, all panelists are chosen by a third party - in this case the Director-General of GATT. They may not be nationals of a party to the dispute. 510/

393. Paragraph 16 of the 1979 Understanding describes the functions of panels as follows:

> "[T]o assist the Contracting Parties in discharging their responsibilities under Article XXIII; accordingly, a panel should make an objective assessment of the matters before it, including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement ... panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution."

394. As is the case with traditional conciliation, the function of the panel thus emphasizes the elements of inquiry, in order to establish the facts giving rise to a dispute and to seek a settlement. The main concern of the whole dispute settlement procedure of GATT, including the panels, as has been repeatedly pointed out, is to reach a settlement agreed by the parties. The requirement that the conclusions of the panel be distributed to the parties to the dispute before circulation to the Contracting Parties is one more evidence of the effort "to encourage development of mutually satisfactory solutions between the parties" 511/ to the dispute.

395. The GATT Council usually adopts the panel's report as submitted, thereby giving the recommendations contained therein an authoritative character, in the form of recommendations or rulings. The following are examples of recently established panels: a panel established in 1973 on a matter referred by the European Communities relating to United States tax legislation; 512/ one established in 1973 on a matter referred by the United States relating to income

---

507/ Annex to the 1979 Understanding, para. 5 *in fine*.

508/ *1982 Declaration* (*supra*, note 492), para. (i).

509/ 1979 Understanding, para. 10.

510/ Ibid., paras. 11-13.

511/ Ibid., para. 18.

512/ GATT, *BISD*, 23 S/98.

tax practices maintained by the Netherlands; 513/ in 1978, on a matter referred by Australia relating to sugar practices of the European Communities (EC); 514/ in 1985, on a matter referred by EC relating to Canadian discriminative measures against imported alcoholic drinks; 515/ in 1986, on a matter referred by Canada, EC and Mexico relating to taxes levied on petroleum and certain imported substances by the United States; 516/ in 1986, on a matter referred by the United States regarding restrictions on imports of certain agricultural products by Japan; 517/ in 1986, on a matter referred by EC relating to the Japanese tax system on imported wine and spirits; 518/ in 1987, on a matter referred by the United States relating to export restrictions on fish by Canada; 519/ and in 1987, on a matter referred by EC and Canada relating to United States import processing fees. 520/ The duration of the proceedings has varied in these cases from a few months to three years.

396. Although article XXIII, paragraph 2, provides for retaliatory measures if the recommendations are not implemented, 521/ there has been in the entire history of GATT only one case of such sanction, namely, a 1952 dispute between the Netherlands and the United States regarding the latter's quotas for dairy products. 522/ In practice, any matter in which recommendations have been made or rulings given is kept "under surveillance" by the Contracting Parties, which periodically review the action taken pursuant to such recommendations and may be asked to "make suitable efforts with a view to finding an appropriate solution". 523/

513/ GATT, BISD, 23 S/137.

514/ GATT, BISD, 26 S/290.

515/ GATT, document L/6304.

516/ GATT, document L/6175.

517/ GATT, document L/6253.

518/ GATT, BISD, 34 S/83.

519/ GATT, document L/6268.

520/ GATT, document L/6269.

521/ The relevant text reads: "[the Contracting Parties] may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances."

522/ BISD, Supplement No. 1. Retaliation took the form of an authorized discriminatory quota on imports of wheat flour from the United States.

523/ 1979 Understanding, para. 22.

397. This conciliation procedure and its sanction (permissible retaliation) is operative mostly in cases where both parties have similar economic strength, and therefore similar potential retaliatory powers. 524/ Mindful of conditions of economic disequilibrium between States, a special regime for disputes in which the plaintiff is a developing country was adopted in 1966. 525/ Although the special regime never functioned as such, the 1979 Understanding reinforces it and elaborates on its principles. The main differences between it and the "regular" procedures are that throughout the phases of the dispute settlement process particular attention is to be paid to the interests of less developed countries; 526/ and that more attention is to be given to enforcement of the recommendations, so that action may be taken, as appropriate, against the non-complying developed party. 527/

398. The dispute settlement clauses of commodity agreements 528/ are similar to those of GATT in that they also provide for a step-by-step procedure, beginning with consultations or negotiations between the parties to the dispute. Upon failure of such mode of settlement, the matter is then referred to the council of the organization (which is a plenary organ) established by the respective commodity agreements. The council takes a binding decision on the matter, in most cases after having sought the opinion of an advisory panel. Unless the Council decides otherwise, advisory panels usually consist of five persons acting in their personal capacity as follows: two members nominated by the exporting members, two by the importing members and a chairman selected either by the other four members or, if they fail to agree, by the chairman of the council. For example, in 1965 an

---

524/ Up to 1979, only two cases can be cited in which the applicant was a developing country and the respondent a developed country: a 1949 claim of Chile against Australia and a 1962 claim by Uruguay against 15 developed States. In the past 10 years, six developing countries have filed complaints.

525/ *Supra*, note 503.

526/ 1979 Understanding, paras. 5, 21 and 23.

527/ Ibid., para. 23.

528/ Such agreements include: the Sixth International Tin Agreement of 26 June 1981 (arts. 48 and 49) (United Nations registration No. 21139), the International Coffee Agreement of 16 September 1982 (arts. 57, 58 and 66) (United Nations registration No. 22376), the International Agreement on Jute and Jute Products of 1 October 1982 (arts. 33 and 44) (United Nations registration No. 22672), the International Tropical Timber Agreement of 18 November 1983 (arts. 29 and 40) (United Nations registration No. 23317), the International Wheat Agreement of 14 March 1986 (arts. 8 and 30) (registered 1 July 1986), the International Agreement on Olive Oil and Table Olives of 1 July 1986 (arts. 50 and 58) (registered 1 January 1987), the International Cocoa Agreement of 25 July 1986 (arts. 62, 63 and 73) (registered with the United Nations on 20 January 1987), the International Rubber Agreement of 20 March 1987 (arts. 54, 55 and 64) (United Nations publication, Sales No. E.87.II.D.8), the International Sugar Agreement of 11 September 1987 (arts. 33, 34 and 42) (registered with the United Nations on 24 March 1988).

advisory panel was set up by the International Coffee Organization (under the 1962 Coffee Agreement) to interpret certain provisions of the Agreement. 529/ An advisory panel was also set up in 1969, under the 1968 Agreement relating to a dispute between Brazil and the United States on processed coffee. 530/

399. Enforcement provisions are also contained in the Agreement. The council, if it establishes that a member has committed a breach of the Agreement, may suspend the rights of that member, including voting rights, or even under certain conditions may exclude that member from the organization. As in the case of GATT, however, such sanctions have not been used in practice.

400. The constitutions of the specialized agencies of the United Nations with financial and economic activities and of certain regional institutions all provide for the same dispute settlement mechanism for any question of interpretation of these treaties arising between any members of the organization or between a member and the organization. 531/ Such disputes are submitted to the organ of restricted membership for decision. If one of the parties is not represented in that organ, it shall be entitled to representation. In any case where the organ has given such a decision, any member may require that the question be referred to the plenary organ, whose decision shall be final. 532/ It is further provided that disputes between the organization and a former member shall be submitted to arbitration.

401. As is the case with the above-mentioned trade organizations, sanctions are also envisaged. A State member of the International Bank for Reconstruction and Development (World Bank), the International Development Association (IDA), the International Finance Corporation (IFC) or the International Fund for Agriculture

---

529/ ICO document ICC-F-60.

530/ ICO document ED-397/69.

531/ Article IX of the Articles of Agreement of the International Bank for Reconstruction and Development (United Nations, Treaty Series, vol. 2, p. 134), article XVIII of the Articles of Agreement of the International Monetary Fund (ibid., vol. 2, p. 40), article VIII of the Articles of Agreement of the International Finance Corporation (ibid., vol. 264, p. 118), article X of the Articles of Agreement of the International Development Association (ibid., vol. 439, p. 249), article 11 of the Agreement establishing the International Fund for Agricultural Development (ibid., vol. 1059, p. 192). See also article 56 of the Convention establishing the Multilateral Investment Guarantee Agency of 11 October 1985; other disputes between the Agency and a member, if not settled by negotiation, are submitted to conciliation and/or arbitration (annex II to the Convention). Similar dispute settlement provisions are incorporated in the Agreement establishing the African Development Fund of 29 November 1972 (arts. 52 and 53, United Nations registration No. 19019); the agreement establishing for the purpose of encouraging private enterprises to supplement activities of the Inter-American Development Bank, the Inter-American Development Corporation of 19 November 1984 (art. IX, International Legal Materials (1985), p. 455).

532/ The IMF Agreement provides for the establishment of a Committee on Interpretation of the Board of Governors which will normally take a final decision in a case instead of the Board of Governors itself (art. XVIII, para. (b)).

and Development (IFAD) that does not fulfil its obligations under any of the respective Agreements may be suspended from membership by the plenary organ. 533/ A State member of the International Monetary Fund (IMF) which fails to fulfil its obligations under the Agreement may be declared ineligible to use the resources of the Fund or may be required to withdraw from the Fund. 534/

402. In order to provide an international forum for the settlement of investment disputes between a State and nationals of another State, apart from those available through the customary law of diplomatic protection, there was established in 1966, 535/ under the auspices of the World Bank, the International Centre for Settlement of Investment Disputes (ICSID). 536/ The Centre provides facilities for the conciliation and arbitration of "any legal dispute arising directly out of an investment, between a Contracting State [...] and a national of another Contracting State". 537/ The Centre does not itself act as conciliator or arbitrator: disputes are referred to conciliation commissions or arbitral tribunals constituted under ICSID's auspices. To that effect, ICSID maintains a Panel of Conciliators and a Panel of Arbitrators, 538/ but conciliators and arbitrators may be appointed from outside the panel. Recourse to ICSID conciliation or arbitration is voluntary and based on the consent of the parties. The mere fact that a State is party to the ICSID Convention does not obligate that State to submit a particular dispute to ICSID. 539/

403. Conciliation has been used only twice since the establishment of ICSID. In one case (SEDITEX v. Madagascar), the proceedings were discontinued before the establishment of a commission; a commission was established in the case Tesoro v. Trinidad and Tobago and its recommendations accepted by the parties in 1985. 540/ Recommendations of conciliation commissions are, as usual, not binding.

533/ Article VI of the World Bank Agreement; article V of the IFC Agreement; article VIII of the IDA Agreement; article 9 of the IFAD Agreement.

534/ Article XV of the IMF Agreement.

535/ Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter ICSID Convention), third preambular paragraph, United Nations, Treaty Series, vol. 575, p. 160.

536/ Article 27 of the ICSID Convention expressly precludes a contracting State from giving diplomatic protection or bringing an international claim on behalf of one of its nationals if the dispute is under the jurisdiction of the Centre unless the other State "shall have failed to abide by and comply with the award rendered in such dispute". See also article 26 on the requirement of the exhaustion of local remedies.

537/ Article 25, paragraph 1.

538/ Articles 12-16.

539/ Seventh preambular paragraph.

540/ News from ICSID, vol. 4, No. 1, winter 1987.

404. Parties have more frequent recourse to arbitration. Nevertheless, a high proportion of cases has been settled by the parties directly rather than through an arbitral award. The most recent arbitrations include: Klockner/Cameroun case 541/ of 26 January 1988 and Société Ouest Africaine des Bétons Industriels v. Senegal of 25 February 1988. 542/ Although awards are binding, requests for interpretation, revision and even annulment are considered under certain circumstances. 543/

405. Part XI of the 1982 United Nations Convention on the Law of the Sea 544/ establishes the International Sea-Bed Authority which, with respect to activities in the Area, is a specialized international organization of economic scope, albeit different from the other organizations mentioned above. Disputes with respect to activities in the Area under Part XI of the Law of the Sea Convention are settled according to a specific system, 545/ distinguishable from those established for the settlement of disputes concerning other parts of the Convention. 546/

406. Disputes between States Parties arising from the conduct of activities in the international sea-bed area may be submitted either to a special chamber of the International Tribunal for Law of the Sea by mutual consent of all parties to the dispute or, at the request of any party to the dispute, to an ad hoc chamber of the Sea-Bed Disputes Chamber of the Tribunal. Moreover, certain categories of disputes between a State Party and the Sea-Bed Authority or between the Authority and a State enterprise or a natural or juridical person sponsored by a State Party in conformity with the Convention may also be referred to the Sea-Bed Disputes Chamber. 547/ As for disputes concerning the interpretation or application of a contract under Part XI, they shall be submitted, at the request of any party to the dispute and unless otherwise agreed, to binding commercial arbitration. In the latter case, if questions of interpretation of Part XI arise, the arbitral tribunal shall refer such questions to the Sea-Bed Disputes Chamber for a binding ruling. It is also worth mentioning that the Assembly or the Council of the Authority may request advisory opinions from the Sea-Bed Disputes Chamber on legal questions arising within the scope of their activities.

541/ ICSID, ARB/81/2.

542/ ICSID, ARB/82/1. Thirteen cases are still pending.

543/ Articles 50-52 of the ICSID Convention.

544/ United Nations publication, Sales No. E.83.V.5.

545/ This mechanism is described in section 5 of part XI, articles 186-191 and annex VI of the Convention.

546/ See para. 428 below.

547/ For the categories of disputes, see articles 187 and 189.

2. Procedures envisaged in the constitutions of other international organizations with specialized activities

407. The constitutive treaties of other specialized agencies of the United Nations as well as of the International Atomic Energy Agency contain provisions on the settlement of disputes relating to the application or interpretation of the respective texts. The general procedure 548/ is as follows: if the matter is not settled by negotiations, it is referred to one of the main organs of the organization. Failing its settlement by that organ, the dispute is further referred to the International Court of Justice or to an arbitral tribunal, unless it is otherwise agreed. 549/ The latter part of the procedure has never been used in practice, given the fact that the scope of activities of these specialized agencies does not give rise to serious disputes between them and their members or

---

548/ This paragraph does not apply to the cases of the International Civil Aviation Organization and the International Labour Organisation, which will be discussed below (paras. 409-417).

549/ See, e.g., article XVII of the Constitution of the Food and Agriculture Organization of the United Nations (FAO) (arbitration is not expressly mentioned as a mode of settlement, only referral to ICJ) (FAO, Basic Texts, vol. I); article XIV, para. 2, of the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (United Nations, Treaty Series, vol. 4, p. 275); article 22, para. 1, of the Constitution of the United Nations Industrial Development Organization (UNIDO) (which also provides for referral to a conciliation commission (United Nations registration No. 23432); article 75 of the Constitution of the World Health Organization (WHO) (arbitration is not expressly mentioned, only referral to ICJ) (ibid., vol. 14, p. 186); articles 65 and 66 of the Convention on the International Maritime Organization (IMO) (referral to ICJ is expressly envisaged only in the form of a request for advisory opinion) (IMCO, Basic Documents, vol. I, 1979, p. 5 and IMCO Assembly Resolution A.358 (IX) of 14 November 1975); article XVII, para. (A) of the Statute of the International Atomic Energy Agency (IAEA) (ibid., vol. 276, p. 3); article 29 of the Convention of the World Meteorological Organization (WMO) (referral to ICJ is not expressly provided for, only arbitration) (ibid., vol. 77, p. 143); articles 50 and 82 of the Convention of the International Telecommunications Union (ITU) (referral to ICJ is not expressly provided for, only arbitration) (United Nations registration No. 19497).

between the members _inter se_. Thus the bulk of disagreements which have arisen have been mostly settled by negotiation. 550/

408. In the majority of these treaties, it is furthermore provided that the organization may under certain conditions request of the International Court of Justice an advisory opinion on any legal question arising within the scope of its activities. 551/ This procedure has been followed in two instances: regarding the interpretation of a provision of the Convention on the Inter-Governmental Maritime Consultative Organization (now the International Maritime Organization) 552/ and regarding the interpretation of an agreement between the World Health Organization and a member State. 553/

550/ Dispute settlement provisions are also incorporated in agreements concluded under the auspices of these organizations. For example, FAO agreements provide for conciliation, arbitration or referral to ICJ; certain agreements provide for the appointment by the Director General of FAO of a committee of experts whose recommendations are not binding (no such provision has been used in practice); the UNESCO Convention against Discrimination in Education is supplemented by a Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of disputes which may arise between States Parties to the Convention (Protocol adopted on 10 December 1962); IMO Conventions usually provide for arbitration or judicial settlement if negotiations fail; dispute settlement provisions also exist in agreements to which an international organization is a party: for example, the Agreement on Safeguards under the Non-Proliferation Treaty of 5 April 1973 (United Nations, _Treaty Series_, vol. 1043, p. 213) between the European Atomic Energy Community (EURATOM), the seven European States and IAEA provides, in the case of disputes, for consultations, referral to the Board of IAEA and to arbitration.

551/ See, e.g., article XVII of the FAO Constitution; article V, para. 11, of the UNESCO Constitution; article 22, para. 2, of the UNIDO Constitution; article 76 of the WHO Constitution; article 66 of the IMO Convention; and article XVII, para. (B), of the IAEA statute.

552/ _Advisory opinion of 8 June 1960 of the Constitution of the Maritime Safety Committee of the IMCO, I.C.J. Reports 1960_, p. 150.

553/ _Advisory opinion of 20 December 1980 on the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, I.C.J. Reports 1980_, p. 73.

409. The International Civil Aviation Organization has a somewhat different mechanism for the peaceful settlement of disputes relating to the interpretation or application of the ICAO Convention. 554/ Negotiations between the parties to the dispute are the first step of the dispute settlement. Upon the failure of negotiations, the matter is referred to the ICAO Council for decision. The procedure before the Council consists of written and oral parts. The Council may ask the Secretary-General of ICAO to institute an investigation to determine the facts relating to a dispute. 555/ In contrast to constitutions of other specialized agencies which provide for direct referral to the International Court of Justice or arbitration if the dispute is not settled by the competent organ, 556/ in the case of ICAO referral to the International Court of Justice or an arbitral tribunal is made in the form of an appeal of the Council's decision. 557/ Sanctions for failure to conformity with the Council's decisions are also envisaged. Thus, defaulting airlines are not allowed to operate through the airspace of contracting States; and the voting powers of a defaulting State may be suspended by the ICAO Assembly. 558/

554/ Chapter XVIII, articles 84-88, of the Convention on International Civil Aviation ("Chicago Convention") (United Nations, *Treaty Series*, vol. 15, p. 295); and *Rules for the Settlement of Differences* (ICAO document 7782/2, 1975).

555/ Article 8 of the *Rules for the Settlement of Differences*. See also chap. II, sect. B ("Inquiry") above, note 30.

556/ See para. 407 above.

557/ Article 85 of the ICAO Convention contains details on the establishment of such an arbitral tribunal.

558/ Two ICAO Conventions, the International Air Services Transit Agreement of 7 December 1944 (United Nations, *Treaty Series*, vol. 84, p. 389) and the International Air Transport Agreement of 7 December 1944 (ibid., vol. 171, p. 387) stipulate that chapter XVIII of the ICAO Convention is applicable with respect to disputes or the interpretation and application of these texts. Furthermore, numerous bilateral agreements between States relating to air services provide for the settlement of disputes or by a decision of the ICAO Council, through arbitration or judicial settlement. In practice, arbitration has been the procedure to which parties in dispute have resorted. See chap. II, sect. F ("Arbitration") above, note 107, as well as a 1981 dispute between Belgium and Ireland (not yet published).

410. In the history of ICAO, three disputes have been explicitly submitted to the Council for resolution under chapter XVIII of the Chicago Convention relating to the settlement of disputes: a complaint by India against Pakistan in 1952, 559/ a complaint by the United Kingdom against Spain in 1969 560/ and a complaint by Pakistan against India in 1971. 561/ In those cases, the Council did not issue a decision on the merits, since the dispute was settled by the parties while the proceedings before the Council were still pending. Such an outcome is actually encouraged by the Council itself. 562/ The procedure of appeal to the International Court of Justice under chapter XVIII of the Chicago Convention also has been used; e.g., India appealed during the 1971 dispute with Pakistan. 563/ There has also been a case of resort to the International Court of Justice by the Islamic Republic of Iran, which filed an application instituting proceedings against the United States of America 564/ with a view to appealing the decision rendered on 17 March 1989 by the ICAO Council. 565/

559/ ICAO document 7367 (A7-P/1) 74-76 (1953).

560/ ICAO document 8903-c/994 27 (1969).

561/ ICAO Council, Seventy-fourth session, 2nd-6th meetings, 22-25 July 1971.

562/ Article 14 of the Rules for the Settlement of Differences.

563/ India appealed claiming that the Council had no jurisdiction over the dispute. Pending the outcome of the appeal, proceedings before the Council were held in abeyance. See Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan), I.C.J. Reports 1972, p. 46.

564/ Application instituting proceedings filed in the Registry of the Court on 17 May 1989: Aerial Incident of 3 July 1988.

565/ Decision of 17 March 1989, ICAO news release PIO 4/89.

411. The scope of activities of the International Labour Organisation (ILO) also calls for a more elaborate dispute settlement procedure because of potential disputes arising from the conduct of States towards individuals in their territories, including their own nationals, in connection with the application of specific ILO Conventions. The ILO Constitution contains a general provision that disputes relating to its interpretation or to the interpretation of Conventions concluded under it shall be referred to the International Court of Justice 566/ and does not envisage a non-judicial procedure for that purpose.

412. Under articles 24 and 25 of the ILO Constitution, any organization of either workers or employers may make a representation with the International Labour Office alleging that a member State has failed to observe any part of the ILO Convention to which it is a party. 567/ The Government may be invited by the ILO Governing Body to respond to the allegation. If a response is either not received or, if received, is not deemed to be satisfactory by the Governing Body, the latter may publish the representation and any responses relating thereto. The most recent cases include: a 1985 representation by the Japanese Trade Unions alleging non-observance by Japan of the Fee-charging Employment Agencies Convention; 568/ a 1985 representation by the National Trade Union Coordinating Council of Chile alleging non-observance of certain international labour conventions by Chile; 569/ a 1986 representation by the Spanish State Federation of Associations of Employees and Workers of the State Administration alleging non-observance by Spain of the Discrimination and Social Policy Conventions; 570/ and a 1986 representation by the Hellenic Airline Pilots Association alleging non-observance by Greece of the Forced Labour Convention and the Abolition of Forced Labour Conventions. 571/

413. A more developed procedure is established under article 26 of the ILO Constitution relating to disputes between States. According to paragraph 1 of the article:

> "Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles."

566/ United Nations, Treaty Series, vol. 15, p. 35, article 37, para. 1, UNTS, vol. 15, p. 35. Paragraph 2 of article 37 calls for the establishment of a procedure of appointment of a tribunal to expedite such a dispute.

567/ ILO is a tripartite organization, with representatives of Governments, of employers and of workers.

568/ ILO Official Bulletin, vol. LXXI, 1988, Supplement 1, Series B, p. 26.

569/ Ibid., p. 35.

570/ Ibid., p. 1.

571/ Ibid., p. 16.

The procedure, which can also be set in motion by the Governing Body itself, is as follows. 572/ The Governing Body may first communicate the complaint to the Government concerned. If no such communication was made or no satisfactory response was received from the Government, the Governing Body may appoint a commission of inquiry to consider the complaint. All members of ILO undertake to cooperate with such a commission. The latter adopts a report containing its recommendations; the report is communicated to the Governing Body and the Governments concerned, and is published. Governments have a three-month limit within which to inform the Director-General of ILO of their acceptance or refusal of the commission's recommendations. In the latter case, they may refer the matter to ICJ for a final decision. If a member fails to carry out the recommendations of the commission or the decision of the Court, the organization may take "such action as it may deem wise and expedient to secure compliance therewith".

414. In practice, the complaint procedure has been used on relatively few occasions. Commissions of inquiry have been established to examine some of these complaints, the most recent of which include: a 1981 complaint relating to observance of certain international labour conventions by the Dominican Republic and Haiti; 573/ a 1982 complaint relating to the observance by Poland of certain international labour conventions; 574/ and a 1984 complaint relating to the observance of the Discrimination Convention by the Federal Republic of Germany. 575/

415. Apart from the above-mentioned procedure, a special machinery has been established for the examination of complaints of the violation of trade union rights. 576/ Such complaints can be examined, regardless of whether the State concerned has ratified the Freedom of Association Conventions, by two specially established bodies: the Governing Body Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association.

416. The Committee, 577/ a tripartite body of nine independent members from the ILO Governing Body, examines complaints even without the consent of the State concerned.

572/ Articles 26-33 of the ILO Constitution.

573/ *ILO Official Bulletin*, vol. LXVI, 1983, special supplement.

574/ Ibid., vol. LXVII, 1984, special supplement.

575/ Ibid., vol. LXX, 1987, Suppl., Series B.

576/ Allegations regarding infringements of trade union rights received by the United Nations against an ILO member State are forwarded by the Economic and Social Council to the Governing Body to follow the described procedure.

577/ The detailed procedure of the preliminary examination of complaints by the Committee is to be found in International Labour Office, *Procedure for the examination of complaints alleging infringements of trade union rights*, June 1985.

Since its establishment in 1951 it has considered over a thousand cases. 578/ The complaint is communicated to the Government concerned, which may be requested to provide further information. The Committee conducts hearings and undertakes on-site visits. Its task is mainly to consider whether cases are worthy of examination by the Governing Body and to make recommendations thereon to the Governing Body. The reports of the Committee are published.

417. The Committee may recommend the referral of the matter to the Fact-Finding and Conciliation Commission. The latter, composed of independent persons appointed by the Governing Body, can only consider a case with the consent of the Government concerned. As opposed to the Committee, the Commission conducts hearings in the presence of the parties to the dispute. The Commission also conducts on-site visits. The report of the Commission, as is usual for conciliation commissions, contains both factual findings and recommendations for the solution of the problem. It is also published. In practice, only five cases have been referred to the Commission: concerning Japan, Greece, Chile, Lesotho and the United States (Puerto Rico). 579/

C. Procedures envisaged in multilateral treaties creating no permanent institutions

418. Multilateral treaties (excluding those of a regional or subregional scope) may be classified as follows on the basis of the types of procedures they provide for the settlement of disputes: (1) those establishing optional procedures; 580/

578/ In 1988, the Committee considered complaints against Peru, Ecuador, the United States, Colombia, Portugal, Spain, Venezuela, the Dominican Republic, Denmark, Brazil, Australia, Chile, Paraguay, Haiti, Uruguay, Zambia, Bahrain, Fiji and Nicaragua. See *ILO Official Bulletin*, vol. LXXI, 1988, Series B, No. 1 (254th and 255th reports of the Committee on Freedom of Association).

579/ *ILO Official Bulletin*, vol. XLIX, 1966, No. 1, Special supplement, ibid., No. 3, Special Supplement; The Trade Union Situation in Chile: report of the Fact-Finding and Conciliation Commission on Freedom of Association. ILO document GB197/3/5 and GB218/7/2. In the case of Greece, the complaint was withdrawn while the proceedings were still pending.

580/ This is the group of multilateral treaties in which dispute settlement procedures do not form an integral part of the treaty itself but are contained in separate optional protocols or in which procedures do form an integral part of the treaty but are subject to an optional declaration of acceptance by the States concerned, thus constituting a non-compulsory system.

(2) those establishing, under the treaty itself, combined non-compulsory and compulsory procedures in which both the International Court of Justice and an arbitral tribunal are offered as choices for judicial settlement; 581/ (3) those establishing a combined procedure in which ICJ is the only compulsory judicial settlement procedure provided; (4) those in which arbitration is the only compulsory procedure for judicial settlement; (5) those in which conciliation is the only third-party compulsory procedure; (6) those which combine adjudication and conciliation as third-party compulsory procedures; and (7) those which rely on panels of experts for resolving technical disputes.

1. Conventions containing optional procedures for dispute settlement

419. Certain multilateral conventions establish a dispute settlement procedure in a separate optional protocol. Thus the procedure is only binding between parties to the dispute which are also parties to the optional protocol. Seven conventions 582/ concluded under the auspices of the United Nations after consideration by the International Law Commission, envisage the following procedure in an optional protocol: any dispute arising out of the interpretation or application of any of the conventions may be brought before ICJ by unilateral request. However, the parties to the dispute may agree before bringing the dispute to ICJ, and within a period of two months, to resort to arbitration or to adopt a conciliation procedure. In the latter case, the conciliation commission shall make its recommendations within five months after its appointment. If they are not accepted by the parties to the dispute within two months, either party may bring the dispute before ICJ.

420. Another type of optional procedure is contained in several human rights conventions, which set up a committee to, *inter alia*, consider claims by a State Party that another State Party is not fulfilling its obligations under the

---

581/ This group, like those classified under (3) to (7), share the common characteristic of being procedures established as integral parts of the multilateral treaties themselves, in contrast to the first group described above in note 580.

582/ Convention on the Territorial Sea and the Contiguous Zone of 29 April 1958; the Convention on the High Seas of 29 April 1958; Convention on Fishing and Conservation of the Living Resources of the High Seas of 29 April 1958; Convention on the Continental Shelf of 29 April 1958 (the same optional protocol for Compulsory Settlement of Disputes applies to all the above Conventions, United Nations, *Treaty Series*, vol. 450, p. 169); Vienna Convention on Diplomatic Relations of 18 April 1961 (ibid., vol. 500, p. 241); Vienna Convention on Consular Relations of 24 April 1963 (ibid., vol. 596, p. 487) and Convention on Special Missions of 8 December 1969 (General Assembly resolution 2530 (XXIV) of 8 December 1969, annex).

Convention. 583/ The procedure is optional in that, although it is an integral part of the treaty in question, it is subject to a declaration of acceptance by both the respondent and the claimant State Party. 584/ The procedure is as follows: the committee first makes its good offices available to the parties concerned in order to reach an amicable solution. The committee may also appoint an ad hoc conciliation commission. A report on the matter is then submitted, which is communicated to the parties to the dispute.

421. Moreover, a procedure for examination by the committee of claims by individuals subject to the jurisdiction of a State Party is also provided for in these treaties, on the condition of the acceptance of the procedure by the State party concerned, 585/ either by declaration or by becoming party to an optional protocol.

2. Conventions containing non-compulsory and compulsory procedures in which both the International Court of Justice and an arbitral tribunal are established as choices for judicial settlement

422. A number of multilateral treaties provide the parties to a dispute arising out of the interpretation or application of the respective conventions with a choice of any of the peaceful means of dispute settlement described in chapter II above. In this case, parties to the dispute are usually called upon first to try to resolve their dispute by negotiation, then by use or intervention of a third party (for good offices mediation, conciliation, inquiry) and then, failing the resolution of the dispute, by referral to arbitration or to the International Court of

---

583/ International Covenant on Civil and Political Rights of 16 December 1966 (United Nations, *Treaty Series*, vol. 999, p. 171, arts. 41 and 42); International Convention on the Elimination of All Forms of Racial Discrimination (arts. 11-13); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 21). The International Convention against *Apartheid* in Sports (art. 13) does not spell out the details of the procedure under which "the Commission may decide on the appropriate measures to be taken in respect of breaches". A similar optional procedure is established in the field of humanitarian law, namely, under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (art. 90 on the International Fact-Finding Commission) (A/32/144, annex I).

584/ Except the International Convention on Elimination of All Forms of Racial Discrimination.

585/ See, e.g., Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966 (United Nations, *Treaty Series*, vol. 999, p. 302); International Convention on the Elimination of All Forms of Racial Discrimination (art. 14); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 22).

Justice, 586/ the latter two methods being put on the same level. A variation of such a type of clause 587/ envisages unilateral referral of the dispute to ICJ, if it cannot be settled by other means, including arbitration. The Court is thus the only means of last resort for the settlement of the dispute. There is yet another type of dispute settlement clause which provides for referral to ICJ if arbitration fails, but limits the choice of non-judicial means to negotiations. It is a standard clause in many treaties 588/ and reads as follows:

586/ See, e.g., the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (International Legal Materials (1989), p. 675, art. 20), which also provides for optional declarations of acceptance of compulsory recourse to arbitration and/or ICJ. See also Convention on Early Notification of a Nuclear Accident of 26 September 1986 (ibid. (1986), p. 137, art. 11) and the Convention on the Assistance in the Case of a Nuclear Accident or Radiological Emergency of 26 September 1986 (ibid. (1986), p. 1384, art. 13), which provide that recourse will be had to arbitration or ICJ at the request of any party to the dispute if the latter is not settled within one year from the request for consultation. But States may declare themselves not bound by the provision concerning referral to arbitration or to ICJ.

587/ See, e.g., Convention on Psychotropic Substances of 21 February 1971 (United Nations, Treaty Series, vol. 1019, p. 175, art. 31); United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988 (art. 32) (E/CONF.82/15 and Corr.2), although States may declare themselves not bound by the provision concerning unilateral referral to ICJ.

588/ See, e.g., international conventions dealing with certain aspects of the question of combating international terrorism: Convention on Offences and Certain Other Acts Committed On Board Aircraft of 14 September 1963 (art. 24): the only difference with the standard clause is that withdrawal of the reservation is notified to ICAO (ibid., vol. 704, p. 220); Convention on the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 (ibid., vol. 860, p. 106, art. 12); Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971 (ibid., vol. 974, p. 178, art. 14); Convention to Discourage Acts of Violence Against Civil Aviation of 23 September 1971: the withdrawal of reservations is notified to depositary Governments (International Legal Materials (1971), p. 1151, art. 14); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents of 14 December 1973 (United Nations, Treaty Series, vol. 1035, p. 168, art. 13); International Convention against the Taking of Hostages of 17 December 1979 (General Assembly resolution 34/146, annex, art. 16); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (IMO document SUA/CON/15, art. 16); Convention on the Making of Plastic Explosives for the Purpose of Detection of 1 March 1991: the withdrawal of reservation is notified to ICAO (S/22393, article XI). See also certain human rights conventions: Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (General Assembly resolution 34/180, annex, art. 29); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (General Assembly resolution 39/46, annex, art. 30); and Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989 (General Assembly resolution 44/34, annex, art. 17).

> "1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
>
> "2. Each State Party may, at the time of signature or ratification of the present Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.
>
> "3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

3. Conventions in which resort to the International Court of Justice is the only compulsory judicial settlement procedure

423. Several international conventions provide that disputes between States Parties arising out of the interpretation or application of those treaties shall be referred to ICJ, at the request of any party to the dispute, unless the dispute can be settled otherwise. 589/ However, the application of this procedure is often subject to reservations by certain States Parties to the conventions insisting that

---

589/ See, e.g., the following human rights conventions: Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (United Nations, Treaty Series, vol. 78, p. 277, art. IX); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949 (ibid., vol. 96, p. 271, art. 22); Convention relating to the Status of Refugees of 28 July 1951 (ibid., vol. 189, p. 137, art. 38); Convention relating to the Status of Stateless Persons of 28 September 1954 (ibid., vol. 360, p. 117, art. 34); International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (ibid., vol. 660, p. 195, art. 22). See also the Convention on the Establishment of the International Institute for the Management of Technology of 6 October 1971 (art. 7, which sets a time limit for the decision to use other means, International Legal Materials (1971), p. 1159) and the Patent Co-operation Treaty of 19 June 1970 (United Nations, Treaty Series, vol. 1160, p. 262, art. 59).

mutual consent of the parties to the dispute is necessary for referral of the dispute to ICJ. 590/

424. Other conventions provide that disputes which have not been settled by negotiation shall be referred to the International Court of Justice by mutual consent, unless another mode of settlement is agreed to by the parties. 591/

4. Conventions in which arbitration is the only compulsory procedure for judicial settlement

425. A number of multilateral treaties provide for arbitration as the only judicial means for the peaceful settlement of disputes (if negotiations are unsuccessful). Thus, certain treaties provide that any dispute concerning the interpretation or application of the respective convention, which cannot be settled through negotiation, and unless the parties otherwise agree, shall be submitted to arbitration at the request of one of the parties. 592/ Others provide for the referral of a dispute to arbitration by mutual consent if no settlement is reached

---

590/ For reservations to certain human rights conventions mentioned in note 578 above, see Multilateral treaties deposited with the Secretary-General (United Nations publication, Sales No. E.89.V.3), pp. 97-114, 289-291. Moreover, there are treaties which expressly provide for the possibility of making reservations regarding the unilateral referral of a dispute to the Court, e.g.: Berne Convention for the Protection of Literary and Artistic Works revised on 14 July 1967 (United Nations, Treaty Series, vol. 828, p. 275, art. 33); Paris Convention for the Protection of Industrial Property revised on 14 July 1967 (ibid., vol. 828, p. 365, art. 28).

591/ See, e.g., International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973 (ibid., vol. 1015, p. 244, art. XII); International Convention against Apartheid in Sports of 10 December 1985 (General Assembly resolution 40/64 G, annex, art. 19); Antarctic Treaty of 1 December 1959 (United Nations, Treaty Series, vol. 402, p. 71, art. XI).

592/ Convention for the Prevention of Pollution from Ships of 2 November 1973 (art. 10, and Protocol II, which spells out the details of the arbitration procedure, International Legal Materials (1973), p. 1326); Convention for the Prevention of Marine Pollution from Land-Based Sources of 4 June 1974 (art. 21 and annex, which spells out the details of the procedure; ibid. (1974), p. 364); the Convention on the International Maritime Satellite Organization (INMARSAT) of 3 September 1976 (art. 31, and annex which spells out the details of the procedures, United Nations, Treaty Series, vol. 1173, p. 119).

through negotiation or any other peaceful means of the choice of the parties. 593/ A variation of the latter envisages, in addition, a system of unilateral declarations of recognition of compulsory recourse to arbitration by a State vis-à-vis another State which has made a similar declaration. 594/

5. Conventions in which conciliation is the only third-party compulsory procedure

426. There are three conventions concluded under the auspices of the United Nations after consideration by ILC which fall into this category, namely, the two conventions on the succession of States 595/ and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975. 596/ They provide for the following procedure: the parties to a dispute have a certain time period in which to resolve the dispute by negotiation or consultation; after this period, any party may submit it to the conciliation procedure specified in the Convention or an annex to it, unless the parties otherwise agree.

593/ See, e.g., Convention on the Conservation of Migratory Species of Wild Animals of 23 June 1979 (International Legal Materials (1980), p. 26, art. XIII). It is worth mentioning that certain regional conventions also contain such a clause; see, e.g., Convention for the Protection of the Mediterranean Sea against Pollution of 16 February 1976 (ibid. (1976), p. 296, art. 22); Convention for the Cooperation in the Protection and Development of Marine and Coastal Environment of the West and Central African Regions of 23 March 1981 (International Legal Materials (1981); p. 754, art. 24); the Convention for the Protection of the Marine Environment of the Wider Caribbean Region of 24 March 1983 (ibid. (1984), p. 234, art. 23).

594/ See, e.g., the two conventions of 1976 and 1983 on protection of regional seas mentioned in note 593 above.

595/ Vienna Convention on Succession of States in respect of Treaties of 23 August 1978 (United Nations, Juridical Yearbook 1978, p. 87, arts. 41-45) and Vienna Convention on Succession of States in respect of State property, Archives and Debts of 7 April 1983 (United Nations, Juridical Yearbook 1983, p. 139, arts. 42-46 and annex).

596/ United Nations, Juridical Yearbook 1975, p. 87, arts. 84 and 85.

6. Conventions combining adjudication and conciliation as compulsory procedures

427. There are various types of such combinations. The law-of-treaties conventions 597/ provide for the following mechanism: the parties to the dispute have 12 months to try to settle it by any means of their choice. After that date, if the dispute involves the relation between a treaty and a peremptory norm of international law (jus cogens), any State party may unilaterally submit the dispute to ICJ; 598/ unless the parties agree by common consent to submit it to arbitration. If the dispute relates to any other matter, any party to it may set in motion a conciliation procedure, the details of which are spelt out in an annex to each of these Conventions.

428. The 1982 United Nations Convention on the Law of the Sea also provides for such a combination of compulsory procedures. 599/ In Part XV of the Convention, the following dispute settlement system is established under section 1 (non-compulsory procedures) and sections 2 and 3 (compulsory procedures). Parties to a dispute concerning the interpretation or application of the Convention shall under section 1 of Part XV first "proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means". 600/ If a settlement is not reached, then recourse to the compulsory sections of Part XV shall be had, depending upon the category of dispute in question, as provided in article 286. Thus for disputes for which compulsory judicial procedures are envisaged, i.e., environmental disputes and disputes arising from the exercise of certain freedoms and rights and other uses of the sea, parties have four choices of forums for such settlement, 601/ namely: the International Court of Justice, the International Tribunal for the Law of the Sea, an arbitral tribunal established under Annex VII of the Convention and a special arbitral tribunal established under Annex VIII. 602/ Parties have to make declarations conferring jurisdiction to one

---

597/ Vienna Convention on the Law of Treaties of 23 May 1969 (United Nations, Treaty Series, vol. 1115, p. 331, arts. 65 and 66) and Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986 (A/CONF.129/15, arts. 65 and 66 and annex).

598/ If an international organization is a party to the dispute, any party to the dispute may request, through the appropriate organs of the United Nations or of an international organization authorized to do so, an advisory opinion of ICJ. Such an advisory opinion shall be accepted as decisive by all the parties.

599/ See note 544 above. For the settlement of disputes concerning Part XI of the Convention, see paras. 405 and 406.

600/ Article 283.

601/ Article 287.

602/ See para. 430 below.

or more of these forums. 603/ If a dispute arises between States which have conferred jurisdiction to the same forum, the dispute is to be submitted to that forum. If a dispute arises between parties that have conferred jurisdiction to different forums, the dispute shall be submitted to arbitration under Annex VII. Also, where a dispute is between a State which has made a declaration on the choice of a forum and another State which has made no declaration, such a dispute shall be referred to arbitration under Annex VII. Further, where a dispute arises between States with declarations that are found not to be operative at the time of the dispute, it will be referred for settlement by arbitration under Annex VII. Thus, under this system, arbitration under Annex VII is assigned a special role. 604/ However, for disputes relating to the exercise by coastal States of their rights concerning the management of living resources within the exclusive economic zone and to boundary delimitation, compulsory resort to conciliation is the established third-party procedure under Annex V, section 2, of the Convention.

429. Another example in this category is the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties of 29 November 1969, 605/ which provides for recourse to conciliation and, if conciliation fails, to arbitration.

7. Conventions which rely on panels of experts for resolving technical disputes

430. In accordance with the procedure described in paragraph 425 above, parties to a technical dispute concerning the interpretation or application of the 1982 United Nations Convention on the Law of the Sea relating to four special fields - namely, fisheries, protection and preservation of the marine environment, marine scientific research and navigation - may submit the dispute to a special arbitral tribunal in

---

603/ So far, 12 States have made declarations under article 287, 6 upon signature and 6 upon ratification. Four declarations provide for referral to arbitration under Annex VII, to arbitration under Annex VIII or to the International Tribunal for the Law of the Sea, depending upon the nature of the dispute. One declaration provides for referral to special arbitration under Annex VIII or to the Tribunal or to ICJ. Two declarations confer jurisdiction upon either the Tribunal or ICJ. Two declarations confer jurisdiction upon the Tribunal only. One declaration provides for arbitration under Annex VII only.

604/ Such a residual role is also given to arbitration by the Convention on the Regulation of Antarctic Mineral Resource Activities of 2 June 1988 (International Legal Materials (1988), p. 894, arts. 56 and 57), which does not however establish conciliation as a predominant procedure. There is a variation of such a system of residual means of settlement in case of conflicting or non-existing declarations which assigns this role to conciliation; see, e.g., the Vienna Convention for the Protection of the Ozone Layer of 22 March 1985 (ibid., (1987), p. 1533, art. 11).

605/ Ibid. (1970), p. 30, art. VIII.

accordance with Annex VIII. In that case, the special arbitral tribunal is composed of five experts, preferably chosen from a list established in each field by the relevant international organization. In the field of fisheries, the list is drawn up by the Food and Agriculture Organization of the United Nations; in the field of protection and preservation of the marine environment by the United Nations Environment Programme; in the field of marine scientific research by the Inter-Governmental Oceanographic Commission; in the field of navigation, including pollution from vessels and by dumping, by the International Maritime Organization, or in each case by the appropriate subsidiary body concerned to which such organization, programme or commission has delegated this function. 606/ The experts constituting the special arbitral tribunal under this system render a binding decision, in contrast to other panels of experts, which deliver non-binding recommendations. 607/

606/ Annex VIII, article 2, para. 2.

607/ See chap. II, sect. I ("Other peaceful means") above, para. 294.

Bibliography

PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES: A SELECTIVE BIBLIOGRAPHY, 1980-1990*

I. PRINCIPLE OF THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

Allsebrook, Mary
Prototypes of peacemaking: the first forty years of the United Nations. Harlow [England]: Longman, 1986. xvi, 160 p.

American Bar Association. Standing Committee on World Order under Law. Draft general treaty on the peaceful settlement of international disputes: a proposal and report. International lawyer. 20(1) Winter 1986: 261-291.

Arend, Anthony Clark
The obligation to pursue peaceful settlement of international disputes during hostilities. Virginia journal of international law. 24(1) Fall 1983: 97-123.

Bailey, Sidney Dawson
How wars end: the United Nations and the termination of armed conflict, 1946-1964. Oxford: Clarendon Press, 1982. 2 v.

Bello-Fadile, Ralph Sixtus Babatunde
The role of the United Nations in conflict management. Zaria, Nigeria: Ahmadu Bello University, 1987. xxiii, 423 p. Thesis.

Bosco, Giorgio
La soluzione delle controversie giuridiche internazionali nel quadro delle Nazione Unite. Padova [Italy]: CEDAM, 1989. xvi, 163 p.

Bowett, Derek
Contemporary developments in legal techniques in the settlement of disputes. Recueil des cours (Hague Academy of International Law). 180(2) 1983: 169-235.

Broms, Bengt
The Declaration on the Peaceful Settlement of International Disputes (Manila). In: Essays in international law in honour of Judge Manfred Lachs. The Hague; Boston [Mass.]: M. Nijhoff, 1984: p. [339]-353.

Broms, Bengt
Organs for conflict resolution and execution. In: Joint UNITAR-Uppsala University Seminar on International Law and Organization for a New World Order (1981: Uppsala, Sweden) The spirit of Uppsala. West Berlin; New York: W. de Gruyter, 1984: p. [486]-501.

---

* For a more comprehensive bibliography see also ST/LIB/SER.B/39.

Diaconu, Ion

Peaceful settlement of disputes between States: history and prospects. In: The structure and process of international law. The Hague; Boston, [Mass.]: M. Nijhoff, 1983. p. [1095]-1119.

Dicke, Klaus

Der kategorische Konjunktiv der Friedenssicherung: zur Deklaration der Generalversammlung über die Prävention und Beilegung internationaler Konflikte. Vereinte Nationen. 37(3) Juni 1989: 91-95.

Dispute settlement in public international law: texts and materials. Compiled by Karin Oellers-Frahm and Norbert Wühler Berlin; New York: Springer Verlag, 1984. xx, 913 p.

Economides, Constantin P.

La Déclaration de Manille sur le règlement pacifique des différends internationaux. Annuaire français de droit international. Vol. 28 1982: 613-633.

Efinger, Manfred

Internationale Regime in den Ost-West-Beziehungen: ein Beitrag zur Erforschung de friedlichen Behandlung internationaler Konflikte. Frankfurt a.M. [Federal Republic of Germany]: Haag + Hershen Verlag, 1988. v, 193 p.

Escher, Regina

Friedliche Erledigung von Streitigkeiten nach dem System der Vereinten Nationen. Zürich [Switzerland]: Schultess Polygraphischer Verlag, c.1985. xx, 185 p.

Espada Ramos, María Luisa

La pacificación internacional de los conflictos internos Revista espagñola de derecho internacional. 35(2) 1983: 393-429.

Florini, Ann and Nina Tannenwald

On the front lines: the United Nations role in preventing and containing conflict. New York: The Multilateral Project, United Nations Association of the United States of America, 1984. 63 p.

Geamanu, Grigoire

Les négotiations: moyen principal du règlement pacifique des différends internationaux. In: Essays in international law in honour of Judge Manfred Lachs. The Hague; Boston [Mass.]: M. Nijhoff, 1984. p. [375]-387.

Haas, Ernst B.

Regime decay: conflict management and international organization, 1945-1981. International organization. 37(2) Spring 1983: 189-256.

Haas, Ernst B.

Why we still need the United Nations: the collective management of international conflict, 1945-1984. Berkeley, Calif.: Institute of International Studies, University of California, 1986. ix, 104 p.

Hayashi, Moritaka
Strengthening the principle of the peaceful settlement of disputes: United Nations efforts and Japan. Japanese annual of international law. No 27, 1984: 27-51.

International conflict resolution: theory and practice. Ed. by Edward E. Azar, John Burton. Sussex, England: Wheatsheaf; Boulder, Colo.: L. Rienner, 1986. ix, 159 p.

International conflict resolution. Ed. by Ramesh Thakur. Boulder [Colo.]: Westview Press: Dunedin [New Zealand]: University of Otago Press, 1988. xiv, 309 p.

International dispute resolution: enforcement of awards or agreements resulting from arbitration, mediation and conciliation. Loyola of Los Angeles international and comparative law journal. 10(3) 1988: 567-627.

International disputes: the legal aspects: report of a study group of the David Davies Memorial Institute of International Studies. London: Europa Publications for the David Davies Memorial Institute of International Studies, 1982. xviii, 325 p.

Israelian, Viktor Levonovich
Vorbeugende Diplomatie mittels Vereinten Nationen: ein Bestandteil sowjetischen neuen Denkens. Vereinte Nationen. 37(1) Feb. 1989: 1-5

Kratochwil, Friedrich, Paul Rohrlich and Harpreet Mahajan Peace and disputed sovereignty: reflections on conflict over territory. Lanham, Md.: University Press of America, 1985. xi, 159 p.

Luard, Evan
Conflict and peace in the modern international system. 2nd completely rev ed. Basingstoke [England]: Macmillan Press 1988. xii, 318 p.

Macht und Ohnmacht der Vereinten Nationen: zur Rolle der Weltorganisation in Drittwelt-Konflikten mit Beiträgen von Mir A. Ferdowsi ... [et al.]. München [Federal Republic of Germany]: Weltforum Verlag, c1987. iii, 243 p.

Malitza, Mircea
Small states and the peaceful settlement of disputes. In: Multilateral negotiation and mediation: instruments and methods. New York: Pergamon Press, 1985. p. 77-88.

Managing international crises. Edited by Daniel Frei. Beverly Hills, [Calif.]: Sage Publications, 1982. 240 p.

Merrills, J. G.
International dispute settlement. London: Sweet and Maxwell, 1984. xvi, 211 p.

Murphy, John Francis
The United Nations and the control of international violence: a legal and political analysis. Totowa [N.J.]: Allanheld, Osmun, 1982. xii, 212 p.

Nzo-Nguty, Bernard Tarkang
The Arab League, United Nations, and Organization of African Unity: contradictions and dilemmas in intra-interorganizational cooperation in conflict management and development. Ann Arbor, Mich.: University Microfilms International, 1987. viii, 400 p. Thesis (Ph.D).

Oeser, Edith
Der internationale Streit: völkerrechtliche Regelungsbedingungen für die Staaten. Berlin: Staatverlag der Deutschen Demokratischen Republik, 1987. 191 p.

Rybakov, Iurii Mikhailovich
Principle of peaceful settlement of disputes as one of the most fundamental principles of contemporary international law. Revue héllenique de droit international. 37(1/4) 1984: 7-13.

Sahovic, Milan
La Déclaration de Manille sur le règlement pacifique des différends internationaux. In: Essays in international law in honour of Judge Manfred Lachs. The Hague; Boston [Mass.]: M. Nijhoff, 1984. p. [449]-458.

Shinkaretskaia, Galina Georgievna
Peaceful settlement of international disputes: an alternative to the use of force. In: The non-use of force in international law. Dordrecht, Netherlands; Boston, Mass.: M. Nijhoff, 1989. p. [39]-52.

Skjelsbaek, Kjell
Peaceful settlement of disputes by the United Nations and other intergovernmental bodies. Cooperation and conflict. 21(3) 1986: 139-154.

Sohn, Louis B.
The future of dispute settlement. In: The structure and process of international law. The Hague; Boston [Mass.]: M. Nijhoff, 1983. p. [1121]-1146.

Stein, Peter
Legal institutions: the development of dispute settlement. London: Butterworth, 1984. ix, 236 p.

Suter, Keith
Alternative to war: conflict resolution and the peaceful settlement of international disputes. 2nd. ed. Sydney [Australia]: Women's International League for Peace and Freedom, 1986. vi, 151 p.

Trindade, Antonio Augusto Cançado
O direto internacional e a soluçao pacífica das controvérsias internacionais. Rio de Janeiro [Brazil]: Destaque Embalagens, 1988. 135 p.

Uribe Vargas, Diego
Solución pacífica de conflictos internacionales: la paz es una tregua. Bogotà: Universidad Nacional de Colombia, Centro Editorial, 1987. 212 p.

Urquhart, Brian E.
Conflict resolution in 1988: the role of the United Nations. World armaments and disarmament. 1989: 445-460.

Väyrynen, Raimo
Is there a role for the United Nations in conflict resolution? Journal of peace research. 22(3) 1985: 189-196.

Väyrynen, Raimo
The United Nations and the resolution of international conflicts. Cooperation and conflict. 20(3) 1985: 141-171.

II. MEANS OF SETTLEMENT

A. Negotiations and consultations

Fombad, Charles Manga
Consultation and negotiation in the pacific settlement of international disputes. African journal of international comparative law. 1(4) Dec. 1989: 707-724.

Getting to the table: processes of international prenegotiation.
Guest editor: Janice Gross Stein. International journal. 44(2) Spring 1989: 231-504.

Gross Stein, Janice
International negotiation: a multidisciplinary perspective. Negotiation journal. 4(3) July 1988: 221-231. Bibliography: p. 230-231.

Iklé, Fred Charles
How nations negotiate. New York: Harper and Row, c. 1964; Millwood, N.Y.: Kraus reprint, 1985. xiii, 274 p.

Processes of international negotiations. Edited by Frances Mautner-Markhof.
Boulder [Colo.]: Westview Press, 1989. x, 541 p.

B. Inquiry

Leurdijk, Dick A.
Fact-finding: the revitalization of a Dutch initiative in the UN. Bulletin of peace proposals. 21(1) Mar. 1990: 59-69.

Pettiti, Louis-Edmond
Les aspects juridiques de la mission de la Commission des Nations Unies en Iran. Revue des sciences morales et politiques. 134(4) 1981: 619-653.

Ruegger, Paul
Nouvelles réflexions sur le rôle des procédures internationales d'enquête dans la solution des conflits internationaux. In: Le droit international à l'heure de sa codification; études en l'honneur de Roberto Ago. Milano [Italy]: Giuffré, 1987. p. [327]-361.

C. Good offices

Jensen, Erik
The Secretary-General's use of good offices and the question of Bahrain. Millenium. 14(3) Winter 1985: 335-348.

Probst, Raymond R.
Good offices in international relations in the light of Swiss practice and experience. Recueil des cours (Hague Academy of International Law). 201(1) 1987: 211-383.

Probst, Raymond R.
"Good offices" in the light of Swiss international practice and experience. Dordrecht, Netherlands; Boston, Mass.: M. Nijhoff, 1989. xi, 182 p.

Ramcharan, Bertrand G.
The good offices of the United Nations Secretary-General in the field of human rights. American Journal of International Law. 76(1) Jan. 1982: 130-141.

Ramcharan, Bertrand G.
Humanitarian good offices in international law: the good offices of the United Nations Secretary-General in the field of human rights. The Hague; Boston [Mass.]: M. Nijhoff, 1983. xii, 220 p.

Shahi, Agha
Can United Nations Secretary-Genera[illegible]d Afghanistan impasse? Pakistan horizon. 38(4) 1985: 28-32.

Simonitsch, Pierre
Keine Eile bei der Lösung des Afghanistankonflikts: UN-Vermittlung am Toten Punkt. Vereinte Nationen. 34(4) Aug. 1986: 126-130.

D. Mediation

Bailey, Sidney Dawson
Non-official mediation in disputes: reflections on Quaker experience. International affairs. 61(2) Spring 1985: 205-222.

Benadava, Santiago
La mediación de la Santa Sede en el diferendo chileno-argentino sobre la zona austral. In: International law at a time of perplexity: essays in honour of Shabtai Rosenne. Dordrecht, Netherlands; Boston, Mass.: M. Nijhoff, 1989. p. [33]-50.

Bercovitch, Jacob
International mediation: a study of the incidence strategies and conditions of successful outcomes. Cooperation and conflict. 21(3) 1986: 155-168.

César Lipovetzky, Jaime
Disparen sobre el Beagle: en defensa de la mediación papal. Buenos Aires: Distal, 1984. 152 p.: ill., maps.

Ilan, Amitzur
Bernadotte in Palestine, 1948: a study in contemporary humanitarian knight-errantry. Basingstoke [England]: Macmillan Press in association with St. Anthony's College, Oxford, 1989. xix, 308 p.

International mediation in theory and practice. Saadia Touval and I. William Zartman, editors. Boulder, Colo.: Westview Press, 1985. ix, 274 p.

Lachs, Manfred
International law, mediation, and negotiation. In: Multilateral negotiation and mediation: instruments and methods. New York: Pergamon Press, 1985. p. 183-195.

Mariño Menéndez, Fernando M.
La mediación de la Santa Sede en el asunto del Canal de Beagle. Revista Espagñola de derecho internacional. 37(2) 1985: 423-448.

Mason, Paul E. and Thomas F. Marsteller
UN mediation: more effective options. SAIS review. 5(2) Summer/Fall 1985: 271-284.

Multilateral negotiation and mediation: instruments and methods. Ed. by Arthur S. Lall. New York: Pergamon Press, 1985. ix, 206 p.

New approaches to international mediation: Edited by C. R. Mitchell and Kay Webb. New York: Greenwood Press, 1988. xiii, 255 p.

Princen, Thomas
International mediation: the view from the Vatican: lessons from mediating the Beagle Channel dispute. Negotiating journal: on the process of dispute settlement. 3(4) Oct. 1987: 347-366.

Raymond, Gregory
Third party mediation and international norms: a test of two models. Conflict management and peace science. 9(1) Fall 1985: 33-51.

Tomuschat, Christian
Neuformulierung der Grundregeln des Völkerrecht durch die Vereinten Nationen: Bewegung, Stillstand oder Rückschritt? zur Interventions-Deklaration von 1981 und zur Manila-Deklaration über Streitbeilegung. Europa Archiv. 38(23) 10 Dez. 1983: 729-738.

United Nations mediation of regional crises. Proceedings (American Society of International Law. Meeting) 80th, 1986: 135-151.

Ury, William
Strengthening international mediation. Negotiation Journal: on the process of dispute settlement. 3(3) July 1987: 225-229.

E. Conciliation

Dore, Isak Ismail
Peaceful settlement of international trade disputes: analysis of the scope of application of the UNCITRAL conciliation rules. Columbia journal of transnational law. 21(2) 1983: 339-352.

Kerameus, K. D.
The use of conciliation for dispute settlement. Revue héllenique de droit international. 32(1/4) 1979: 41-53.

Patchen, Martin
Resolving disputes between nations: coercion or conciliation? Durham, N.C.: Duke University Press, 1988. xiii, 365 p.

F. Arbitration

Bowett, D. W.
The Taba Award of 29 September 1988. Israel law review. 23(4) Autumn 1989: 429-442.

Fischer-Zernin, Vincent
Arbitration and mediation: synthesis or antithesis? Journal of international arbitration. 5(1) Mar. 1988: 21-40.

Guide to international arbitration and arbitrators. Parker School of Foreign and Comparative Law, Columbia University. Dobbs Ferry, N.Y.: Transnational Juris Publications, Inc., 1989. Annual.

Hoellering, Michael F.
International commercial arbitration: a peaceful method of dispute settlement. Arbitration journal. 40(4) Dec. 1985: 19-26.

Jarvin, Sigvard
Multi-party arbitration: identifying the issues. New York Law School journal of international and comparative law. 8(2) Spring 1987: 317-325.

The questionable validity of arbitration and awards under the rules of the International Chamber of Commerce. Journal of international arbitration. 6(2) June 1989: 79-100.

Lacharrière, Guy de
Case for a tribunal to assist in settling trade disputes. World economy. 8(4) Dec. 1985: 339-352.

Lagergren, Gunnar
The Taba tribunal, 1986-89. African journal of international and comparative law. 1(4) Dec. 1989: 525-532.

Leahy, Edward R. and Kenneth J. Pierce
Sanctions to control party misbehaviour in international arbitration. Virginia journal of international law. 26(2) Winter 1986: 291-325.

Redfern, Alan and Martin Hunter
Law and practice of international commercial arbitration. London: Sweet and Maxwell, 1986. xliii, 462 p.

Répertoire de la jurisprudence arbitrale internationale - Repertory of international arbitral jurisprudence. Préparé par Vincent Coussirat-Coustère et Pierre Michel Eiseman. Dordrecht [Netherlands]; Boston [Mass.]: M. Nijhoff, 1989. 2 v.

Rubino-Sammartano, Mauro
International arbitration law. Deventer Netherlands; Boston, Mass.: Kluwer, 1989. xii, 537 p.

Schwebel, Stephen M.
International arbitration: three salient problems. Cambridge [England]: Grotius Publications Ltd., 1987. xviii, 303 p.

Sokol Colloquium (6th: 1982: Charlottesville, Va.)
Resolving transnational disputes through international arbitration. Thomas E. Carbonneau, editor and contributor. Charlottesville, [Va.]: University Press of Virginia, 1984. x, 301 p.

Weil, Prosper
Some observations on the Arbitral Award in the Taba case. Israel law review. 23(1) Winter 1989: 1-25.

G. Judicial settlement

Jiménez de Aréchaga, Eduardo
The work and the jurisprudence of the International Court of Justice, 1946-1986. British yearbook of international law. Vol. 58 1987: 1-38.

Bilder, Richard B.
Some limitations of adjudication as an international dispute settlement technique. Virginia journal of international law. 23(1) Fall 1982: 1-12.

Casado Raigón, Rafael
El enfoque jurisprudencial de los artículos 36, paràgrafo 5.0, y 37 del Estatuto de la Corte Internacional de Justicia. Revista espagñola de derecho internacional. 39(1) enero/junio 1987: 23-44.

Elias, Taslim Olawale
The role of the International Court of Justice in Africa. African journal of international and comparative law. 1(1) Mar. 1989: 1-12.

Gray, Christine D.
Judicial remedies in international law. Oxford [England]: Clarendon Press, 1987. xix, 250 p.

Kebbon, Niklas
The World Court's compulsory jurisdiction under the optional clause: past, present and future. Nordic journal of international law. 58(3) 1989: 257-286.

Koojimans, Peter H.
Who tolled the death-bell for compulsory jurisdiction? Some comments on the judgements of the ICJ. In: Realism in law-making. Dordrecht, Netherlands; Boston [Mass.]: M. Nijhoff, 1986: p. [71]-87.

Mawungu, Mvumbi-di-Ngoma
La contribution de la Cour Internationale de Justice aurèglement pacifique des différends touchant les Etats africains. Geneva: Institut universitaire de hauts études internationales, 1987. 376 p.

McWhinney, Edward
Acceptance, and withdrawal or denial, of World Court jurisdiction: some recent trends as to jurisdiction. Israel law review. 20(2/3) Spring/Summer 1985: 148-166.

Przetacznik, Frank
The compulsory jurisdiction of the International Court of Justice as a prerequisite for peace. Revue de droit international, de sciences diplomatiques et politiques. 68(1) janv./mars 1990: 39-74.

Rosenne, Shabtai
The law and practice of the International Court. 2nd rev. ed. Dordrecht, Netherlands; Boston, Mass.: M. Nijhoff, 1985. xxv, 811 p.

Rosenne, Shabtai
The role of controversy in international legal development. In: The structure and process of international law. The Hague; Boston [Mass.]: M. Nijhoff, 1983. p. [1147]-1185.

Rosenne, Shabtai
The role of the International Court of Justice in Inter-State relations today. Revue belge de droit international. 20(2) 1987: 275-289.

Scott, Gary
Compulsory jurisdiction and defiance in the World Court: a comparison of the PCIJ and the ICJ. Denver journal of international law and policy. 16(2/3) Winter/Spring 1988: 377-392.

Virally, Michel
Le champ opératoire de règlement judiciaire international. Revue générale de droit international public. 87(2) 1983: 281-314.

Zoller, Elisabeth
La première constitution d'une chambre spéciale par la Cour Internationale de Justice: observations sur l'Ordonnance du 20 Janvier 1982. Revue générale de droit international public. 86(2) 1982: 305-324.

H. Resort to regional agencies or arrangements

Amankwah, H. A.
International law, dispute settlement and regional organizations in the African setting. Indian journal of international law. 21(3) July/Sept. 1981: 352-386. Also published in: Third world attitudes towards international law. Dordrecht [Netherlands]; Boston [Mass.]: M. Nijhoff, 1987. p. [197]-217.

Association for Research and Specialization in Ibero-American Themes (Madrid)
Territorial conflicts in Latin America and procedures for settlement. UNESCO yearbook on peace and conflict studies. 1984: 147-179.

Balakhovskii, IA. M.
Razreshenie sporov v mezhdunarodnom prave: rol' Soveta IKAO. Sovetskii ezhegodnik mezhdunarodnogo prava. 1984: 159-172. Summary in English

Bukaramba, Bukar
The role and impact of the OAU in the management of African conflicts. Survival. 25(2) Mar./Apr. 1983: 50-58.

Caminos, Hugo
New departures in the exercise of inherent powers by the UN and OAS Secretaries-General: the Central American situation. American journal of international law. 83(2) Apr. 1989: 395-402.

Hafner, Gerhard
Bemühungen um ein gesamteuropäische Streibeilegungssystem im Rahmen der KSZE. In: Völkerrecht, Recht der internationalen Organisationen, Weltwirtschaftsrecht: Festschrift für Ignaz Seidl-Hohenveldern. Köln [Federal Republic of Germany]: Heymanns, 1988. pp. 147-171.

International Peace Academy. Off-the-Record Workshop (1986: Lima)
Regional cooperation for development and the peaceful settlement of disputes in Latin America. Edited by Jack Child. Dordrecht [Netherlands]; Boston, Mass.: M. Nijhoff, 1987. xi, 158 p.

Kenig, Maria Magdalena
L'organisation de l'Unité Africaine et le règlement des différends internationaux en Afrique. Africa bulletin. No. 33 1986: 7-35.

Kenig, Maria Magdalena
Quelques aspects du processus juridico-politique de règlement des différends internationaux en Afrique. Africa bulletin. No. 34 1987: 93-105.

Kenig, Maria Magdalena
Le règlement des différends entre les ètats africains. Verfassung und Recht im Übersee. 19(1) 1986: 75-91.

Krumwiede, Heinrich-W.
The Arias peace plan for Central America. Aussenpolitik: German foreign affairs review. 39(1) 1988: 61-72.

Muluwa, Tiyanjana
The peaceful settlement of disputes among African States, 1963-1983: some conceptual issues and practical trends. International and comparative law quarterly, 38(2) Apr. 1989: 299-320.

Martz, Mary Jeanne Reid
The Central American soccer war: historical patterns and internal dynamics of OAS settlement, Athens, Ohio: Ohio University, Center for International Studies, Latin America Program, 1978. 113 p.

Sager, Sonia
Die Tätigkeit der OAU bei der Regelung von Konflikten. Asien, Afrika, Lateinamerika. 16(5) 1988: 867-876.

Slinn, Peter
The role of the Commonwealth in the peaceful settlement of disputes. In: The non-use of force in international law. Dordrecht, Netherlands; Boston, Mass.: M. Nijhoff, 1989 p. [119]-135.

III. PROCEDURES ENVISAGED IN THE CHARTER OF THE UNITED NATIONS*

Bourloyannis, M.-Christiane
Fact-finding by the Secretary-General of the United Nations. New York University journal of international law and politics. 22(4) Summer 1990: 641-669.

Caradon, Hugh
The Security Council as an instrument for peace. In: Multilateral negotiation and mediation: instruments and methods. New York: Pergamon Press, 1985. p. 3-13.

Elias, Taslim Olawale
Scope and meaning of article 2(4) of the United Nations Charter. In: Contemporary problems in international law: essays in honour of Georg Schwarzenberger on his eightieth birthday. London: Stevens & Sons, 1988. p. 70-85.

Armed force, peaceful settlement, and the United Nations Charter: are there alternatives to a "new international" anarchy? Proceedings (American Society of International Law. annual Meeting). 77th, 1983: 31-51.

IV. PROCEDURES ENVISAGED IN OTHER INTERNATIONAL INSTRUMENTS

Adede, Andronico Oduogo
The system for settlement of disputes under the United Nations Convention on the Law of the Sea: a drafting history and commentary. Dordrecht [Netherlands]; Boston [Mass.]; M. Nijhoff Publishers, 1987. xv, 285 p.

---

* See also under I.

Agyemang, Augustus A.
African states and ICSID arbitration. Comparative and international law journal of Southern Africa. 21(2) July 1988: 177-189.

Alhéritière, Dominique
Settlement of public international disputes on shared resources: elements of a comparative study of international instruments. Natural resources journal. 25(3) July 1985: 701-711.

Böckstiegel, Karl-Heinz
Proposed draft convention on the settlement of space law disputes. Journal of space law. 12(2) Fall 1984: 136-162.

Bogaert, E. R. C. van
Procedures for the settlement of aerial incidents. Studia diplomatica. 33(5) 1980: 511-537.

Bosco, Giorgio
Settlement of disputes under the Antarctic Treaty. In: International law for Antarctica. Milano [Italy]: Giuffrè, 1987 p. [23]-26.

Chauhan, B. R.
Settlement of international water law disputes in international drainage basins. Berlin [West]: E. Schmidt Verlag, 1981. 480 p.

Coquia, Jorge R.
Settlement of disputes in the United Nations Convention on the Law of the Sea: new directions in the settlement of international disputes. Indian journal of international law. 25(2) Apr./June 1985: 171-190.

Erasmus, Gerhard
Dispute settlement in the law of the sea. Acta juridica (University of Cape Town). 1986: 15-27.

Flory, Thiébaut
Les accord du Tokyo Round du GATT et la réforme des procédures de règlements des différends dans le système commercial interétatique. Revue générale de droit international public. 86(2) 1982: 235-253.

Hareth, Mzioudet
Le règlement des différends dans les conventions du droit diplomatique. Etudes internationales (Association des études internationales [Tunis]. No. 24 Oct. 1987: 19-38.

Hayashi, Moritaka
The dispute settlement clause of the 1986 Vienna Convention on the Law of Treaties. New York University journal of international law and politics. 19(2) Winter 1987: 327-356.

Ingersoll, Shaun A.
Current efficacy of the GATT dispute settlement process. Texas journal of international law. 22(1) Winter 1987: 87-108.

Jacovides, Andreas J.
Peaceful settlement of disputes in ocean conflicts: does UNCLOS III point the way? In: Contemporary issues in international law. Kehl, Federal Republic of Germany; Arlington, [Va.]: N. P. Engel, 1984. p. [165]-168.

Jaenicke, Günther
Dispute settlement under the Convention of the Law of the Sea. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. 43(4) 1983: 813-827.

Jiménez de Aréchaga, Eduardo
Tentativas de reforma del Pacto Bogotá. Anuario jurídico interamericano. 1986: 3-11.

Kindt, John Warren
Dispute settlement in international environmental issues: the model provided by the 1982 Convention on the Law of the Sea. Vanderbilt journal of transnational law. 22(5) 1989: 1097-1118.

Lehoux, Gregoire
La Troisième Conférence sur le droit de la mer et le règlement obligatoire des différends. Canadian yearbook of international law. Vol. 18 1980: 31-90.

Leoro Franco, Galo
El proyecto de reformas del Comité jurídico Interamericano al Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá). Anuario jurídico interamericano. 1986: 13-37.

Leoro Franco, Galo
La reforma del Tratado Americano de Soluciones Pacíficas o Pacto de Bogotá. Anuario jurídico interamericano. 1981: 30-79.

Lukaszuk, Leonard
Settlement of international disputes concerning marine scientific research. Polish yearbook of international law. Vol. 16, 1987: 39-56.

Meng, Werner
Streitbeilegung im GATT. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. 4(1) 1981: 68-102.

Mounteer, Thomas R.
The General Agreement on Tariffs and Trade (GATT) and the Law of the Sea (LOS) Convention: a critical comparison of arbitration provisions. International lawyer. 21(4) Fall 1987: 989-1012.

Oda, Shigeru
Some reflections on the dispute settlement clauses in the United Nations Convention on the Law of the Sea. In: Essays in international law in honour of Judge Manfred Lachs. The Hague; Boston [Mass.]: M. Nijhoff, 1984. p. [645]-655.

Petersmann, Ernst-Ulrich
The mid-term review agreements of the Uruguay Round and the 1989 improvements to the GATT dispute settlement procedures. German yearbook of international law. Vol. 32, 1989: 280-322.

Petersmann, Ernst-Ulrich
Strengthening GATT procedures for settling trade disputes. World economy. 11(1) Mar. 1988: 55-89.

Platzöder, Renate
Der Internationale Seegerichtschof: zum Stand der Vorbereitungen seiner Errichtung in Hamburg. Vereinte Nationen. 38(1) Feb. 1990: 15-19.

Rao, Bhimsen
Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea. Indian journal of international law. 25(2) Apr./June 1985: 226-244.

Richardson, Elliot L.
Dispute settlement under the Convention on the Law of the Sea: a flexible and comprehensive extension of the rule of the law to ocean space. In: Contemporary issues in international law. Kehl, Federal Republic of Germany; Arlington [Va.]: N. P. Engel, 1984. P. [149]-163.

Singh, Gurdip
United Nations Convention on the Law of the Sea: dispute settlement mechanisms. New Delhi: Academic Publications, 1985. xvi, 271 p.

Sohn, Louis B.
The role of arbitration in recent international multilateral treaties. Virginia journal of international law. 23(2) Winter 1983: 171-189.

Sohn, Louis B.
Settlement of disputes relating to the interpretation and application of treaties. Recueil des cours (Hague Academy of International Law). 150(2) 1976: 195-294.

Touscoz, Jean
Le règlement des différends dans la Convention instituant l'Agence multilatéral de garantie des investissements (A.M.G.I.): un développement del'arbitrage international et du droit des investissements internationaux. Revue de l'arbitrage. No. 4 oct./déc. 1988: 629-638.

Tupman, W. Michael
Case studies in the jurisdiction of the International Centre for Settlement of Investment Disputes. International and comparative law quarterly. 35(4) Oct. 1986: 813-838.

Weiss, Friedl
Dispute settlement in GATT: the current debate. In: The non-use of force in international law. Dordrecht, Netherlands; Boston, Mass.: M. Nijhoff, 1989. p. [221]-247.

INDEX

African Charter on Human and Peoples' Rights; 233,* 263.

American Convention on Human Rights (Pact of San José); 198, 201, 207, 233, 236, 259, 262.

Agreement Governing the Activities of States on the Moon and other Celestial Bodies; 28, 39, 60, 70, 288.

American Treaty on Pacific Settlement (Pact of Bogotá); 7, 9, 19, 84, 103, 106, 117, 121, 124, 125, 127, 129, 131, 136, 143, 145, 146, 151, 158, 172, 206, 232, 242, 281.

Applicable law; 176, 177, 181, 182, 221.

Arbitration:

- general; 168-195
- administrative aspects of; 176, 177, 188, 189
- appointment of agents; 176
- appointment of Arbitrators; 170, 172, 174, 178, 179
- as a choice for judicial settlement; 422, 427-429
- awards:
    - appeal from; 198
    - binding nature of; 176, 192
    - correction of; 194
    - execution of; 195
    - implementation: dispute relating to; 129
    - interpretation of; 194
    - presentation in writing; 193
    - revision of; 194
    - distinguished from judicial settlement; 170, 198, 199
    - International Law Commission: model rules on; 176, 194
    - mixed tribunals; 171
    - optional compulsory procedures relating to; 419
    - relation to inquiry; 74, 82, 90
    - resort to under regional agencies or arrangements; 235, 237, 239, 246-250, 252, 253, 255, 269-270, 273.

Boundary disputes; 89, 138, 172, 177, 178, 181, 182, 184, 186, 195, 200, 211, 274, 275, 277, 281, 282, 308, see also Continental shelf.

"Bryan" treaties; 84.

---

* The number identifies the paragraphs of the handbook.

Charter of the United Nations:

- article 1; 1, 15
- article 2; 1, 17
- article 7; 313
- article 10; 352-354, 356
- article 11; 352, 354, 356, 359, 365
- article 12; 32, 352, 353, 357, 365
- article 13; 352, 354, 359
- article 14; 352, 354, 356, 361, 362
- article 24; 316
- article 28; 46
- article 33; 1, 19, 20, 22, 24, 36, 65, 67, 104, 142, 148, 196, 230, 231, 234, 237, 288-291, 296, 306, 314, 317, 325, 328, 330, 331
- article 34; 317, 319-321, 328, 330, 331
- article 35; 328, 330, 331, 356
- article 36; 67, 317, 322-328, 330, 331
- article 37; 317, 321, 322, 328-331
- article 38; 317, 322, 330-332
- article 52; 231, 233, 237, 285, 287, 334
- article 54; 335
- article 93; 213
- article 96; 212
- article 97; 367
- article 98; 367, 368, 372
- article 99; 245, 367, 373, 374, 378.

Commodity Agreements; 52, 60, 70, 387, 398-399.

Compromis; 174-178, 180, 183, 184, 186-189, 191-195, 198, 202-204, 303-305, 308, 311.

Compromissory clause; 174-175, 202, 205, 206, 211.

Conciliation:

- general; 140-167
- as a choice of compulsory procedure; 149, 167, 426-429
- as an optional procedure; 419, 420
- binding recommendations of; 165, 167
- non-binding recommendations of; 155, 164
- recommendations for parties to consider in good faith; 166
- relation to inquiry; 74, 82, 90
- resort to under regional agencies or arrangements; 235, 237, 239, 240, 242, 246, 248, 251-253, 255, 259, 261, 263, 269, 271, 274
- rules of procedures of; 141, 156, 157
- termination of; 160
- United Nations Commission on International Trade Law (UNCITRAL): rules on; 148.

Conciliation commissions:

- ad hoc; 141, 147, 148, 154, 162, 163
- permanent; 151, 154, 163
- pre-constituted list of individuals for appointment to; 151-153.

Conference on Security and Cooperation in Europe; 4, 7, 14, 19, 124, 255-258.

Consent; 60, 70, 83-85, 94, 120, 129, 133, 154, 155, 158, 160, 170, 174, 175, 186, 209, 243, 247, 353, 378, 381, 402, 406, 416, 417, 423-425, 427.

Consultations: and negotiations - general; 21-73.

Contemporary international law: principles and rules of; 16.

Continental Shelf; 21, 36, 57, 65, 113, 171, 177, 178, 180, 187, 193, 198, 200, 203, 204, 211, 214, 284, 324, 419.

Convention on International Liability for Damage Caused by Space Objects; 303.

Convention on the Transit Trade of Land-Locked States; 51, 70.

Council of Europe; 201, 216, 232, 259, see also European Convention for the peaceful settlement of disputes.

Court of Justice of the European Communities; 199, 201, 208, 209, 214-216, 223, 226, 227, 265-267.

Court of Justice under the Benelux Treaty; 199, 201, 215.

Court of Justice under the Cartagena Agreement; 201.

Covenant of the League of Nations; 76, 197, 212.

Decolonization: disputes relating to; 113.

Disputes:

- legal; 22, 97, 128, 140, 199, 201-207, 212, 251, 253, 254, 291, 327, 347, 402, 406, 408
- non-legal; 251, 252
- settlement by an international conference; 41, 290
- settlement by political or non-judicial organ of an international or regional organization; 256, 258, 259, 291, 292, see generally Chapter III.

Dissenting opinion; 193, 222.

Domestic jurisdiction: duty not to intervene in; 3.

Economic Community of West Africa; 233, 268.

Enforcement; 200, 314, 397, 399.

Equal rights: principle of; 3, 4, 10.

Equitable solution: principle of; 182.

Equity; principle of; 182.

European Communities; 215, 233, 236, 264-267, 395, see also Court of Justice of the European Communities;

European Convention for the Peaceful Settlement of Disputes; 143, 145-146, 150, 158, 178, 206, 211, 232, 251-254, 284.

European Court of Human Rights; 201, 207, 212, 216, 220, 259.

European Nuclear Energy Agency; 201.

Evidence; 82, 85, 86, 184, 185, 190, 220, 320.

Ex aequo et bono; 182, 221.

Exhaustion of local remedies: the rule of; 18, 200, 202, 402.

Experts; 78, 85, 90, 91, 97, 152, 158, 179, 190, 195, 220, 228, 255, 257, 294, 407, 418, 430.

Fact-finding; 77-81, 91, 94, 98, 99, 104, 143, 158, 241, 243, 257, 274, 275, 277, 278, 337, 344, 365, 371, 378, 379, 415, 417, 420, see also inquiry.

Food and Agriculture Organization (FAO); 294, 407, 408, 430.

Free choice of means: principle of; 15, 19, 20, 237, 346.

Friendly relations: Declaration on; 2, 3, 5, 10-11, 17, 19, 20, 124, 142, 288.

General Acts of Pacific Settlement of Disputes; 21, 29, 141, 143, 144, 146, 147, 158, 174, 178, 179, 181, 182, 205, 306, 359.

General Agreement on Tariffs and Trade; 52, 387-397.

General Assembly of the United Nations:

- general; 352-366
- inquiry; 77, 78, 82, 88, 90
- negotiations and consultations; 32, 33, 48, 55, 62, 72.

Good faith: principle of; 3-4, 13, 14, 54, 55, 58, 104, 166, 168, 258, 299, 303.

Good offices:

- general; 101-122
- by States; 111
- by an individual; 107, 112-115, 119, 120, 250, 275, 300, 301
- by an organ of an international organization of universal character; 104, 112
- by an organ of an international organization of a regional character; 239-240, 243, 274, 277
- Inter-American treaty on; 124, 125, 129, 136

Gondra treaty; 84.

Hague Conventions for the Pacific Settlement of Disputes of 1899 and 1907; 75, 81-83, 85, 91-93, 95, 97-99, 103, 105, 117, 122, 124, 125, 127, 137, 138, 168, 170, 172, 174, 178, 179, 185, 194, 195.

Helsinki Final Act; see Conference on Security and Cooperation in Europe.

Inquiry:

- general; 74-100
- by an individual; 80, 81, 88, 91, 92, 96
- by an organ of an international organization of universal character; 80, 81, 88, 91
- by an organ of an international organization of a regional character; 77, 247, 273
- relation to arbitration; 74, 82, 90
- under Additional Protocol I of 1977 to the 1949 Geneva Conventions for the Protection of War Victims; 81, 91, 95
- under American Treaty on Pacific Settlement (Pact of Bogotá); 84, 85
- under 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes; 75, 81-83, 85, 91-93, 95, 97-99
- under 1982 United Nations Convention on the Law of the Sea; 91, 98, 99.

Inter-American Court of Human Rights; 201, 207, 209, 216, 220, 259, 262.

Interim measures; see Provisional measures.

International Bank for Reconstruction and Development (IBRD); 139, 400-402.

International Centre for Settlement of Investment Disputes (ICSID); 402-404.

International Civil Aviation Organization (ICAO); 81, 200, 293, 407, 409, 410, 422.

International Court of Justice:

- agents: appointment of; 219, 220
- competence; (see also jurisdiction), 198, 202
- chambers: use of; 211, 217, 226
- decisions; 196, 198, 199, 202, 204, 214, 217, 218, 220, 222, 229
- declaratory judgement; 229
- default (non-appearance); 220
- institution of proceedings:
    - application; 210, 211
    - special agreements; 202-204, 210, 211, 217, 219, 221
- jurisdiction; 197, 199, 202, 203, 205, 207, 209, 212, 217, 219, 221
- third-party intervention; 214, 229
- witnesses; 220, 228.

International Development Association (IDA); 400-401.

International Plant Protection Convention; 294.

International Finance Corporation (IFC); 400, 401.

International Fund for Agriculture and Development (IFAD); 400, 401.

International Labour Organisation (ILO); 85, 91, 96, 100, 199, 407, 411-417.

International Maritime Organization (IMO); 30, 199, 407, 408, 422, 430.

International Monetary Fund (IMF); 400, 401.

International Tribunal for the Law of the Sea; 197, 208, 211, 214-217, 220, 406, 428, see also United Nations Convention on the Law of the Sea.

Jus cogens; 205, 427.

Justice: principles of; 1-3, 15, 17, 182, 268, 288, 313.

Judicial settlement:

- general; 196-229
- resort to under regional agencies or arrangements; 199, 201, 207-209, 212, 214-216, 235-237, 242, 251, 253, 255, 259, 265, 267-269, 281, 284.

League of Arab States; 7, 124, 232, 235, 239-241, 273-276, 326.

League of Nations; 77, 141, 144, see also Covenant of the League of Nations.

Manila: Declaration of; 2, 5, 6, 8, 10-16, 18-20, 22, 23, 32, 54, 71, 104, 124, 142, 288, 322, 332, 337, 338, 363, 364, 373, 376.

Mediation:

- general; 123-139
- relation to good offices; 102, 103, 105, 106, 125
- relation to conciliation; 126, 134, 136, 140
- relation to negotiation; 41, 59, 64, 72, 126, 132, 135, 138, 139
- by an individual; 129, 132, 134, 282, 301
- by an organ of an international organization of a regional character; 235, 239, 240, 241, 259, 263, 269, 274, 275
- by an organ of an international organization of a universal character; 133, 134, 325
- Inter-American treaty on; 124, 125, 129, 136.

Negotiations and Consultations:

- general; 21-73
- in relation to good offices; 41, 59, 60, 62-64, 102, 106, 107, 121
- in relation to mediation; 41, 59, 64, 72, 126, 132, 135, 138, 139
- under the United Nations Convention on the Law of the Sea; 26, 28, 70, 428.

Non-intervention: principle of; 4, 8, 9.

Non-use of force: principle of 3, 4, 6, 7.

Organization of African Unity (OAU); 110, 115, 124, 125, 127, 129, 138, 143, 145, 151, 158, 232, 233, 235, 246-250, 263, 269, 282, 283, 285.

Organization of American States (OAS); 21, 110, 115, 124, 232, 235, 242-245, 259, 277-281.

Other peaceful means: general; 288-312.

Pact of Bogotá; see American Treaty on Pacific Settlement.

Pact of the League of Arab States; 7, 124, 232, 235, 239-241, see also League of Arab States.

Pact of San José; see American Convention on Human Rights.

Permanent Court of Arbitration; 81, 95, 100, 172, 174, 179.

Permanent Court of International Justice; 21, 73, 197, 198, 200, 212.

Pleadings; 157, 161, 184, 219, 224, 308.

Preliminary objections; 42, 56, 73, 202, 327.

Prevention and removal of disputes: declaration on; 2, 80, 104, 322, 332, 338-347, 363, 365, 377, 378.

Provisional measures; 199, 229.

Regional agencies or arrangements:

- general; 230-287
- relation to the United Nations with respect to the settlement of disputes; 285-287.

Registrar; 190, 210, 218, 227.

Registry; 95, 172, 189, 203, 227, 410.

Rules of procedure; 90, 92, 141, 156, 157, 174, 176, 177, 180, 193, 198, 214, 217, 218-228, 287, 309, 372.

Sanctions; 396, 397, 399, 401, 409.

Secretary-General: League of Arab States; 241, 275.

Secretary-General: OAS; 110, 115, 245, 277-280, 282.

Secretary-General: OAU; 110.

Secretary-General of the United Nations:

- general; 367-381
- collaboration with the Secretary-General of OAS; 110, 115, 278, 280
- collaboration with the Secretary-General of OAU; 110
- conciliation; 148, 152, 153, 160, 161
- inquiry; 77, 78, 81, 82, 84, 88, 89, 91, 92, 96, 348, 350
- good offices; 62, 63, 107, 110, 112-115, 119, 120
- mediation; 72, 132-134, 301.

Security Council:

- general; 316-351
- good offices; 104, 107, 112, 325, 344, 350
- inquiry; 81, 88, 104, 337, 344
- mediation; 133, 134, 325
- negotiations and consultations; 34, 55, 63, 65, 320, 325, 331, 340, 342
- relation to dispute settlement by regional agencies or arrangements; 285, 287, 333-335
- simultaneous consideration of a case with the International Court of Justice; 65, 66, 327.

Self-determination; 3, 4, 10, 33, 283, 361.

Separate opinion; 158, 193, 222.

Sovereign Equality of States; 3, 4, 11, 15, 19.

Sovereignty; 4, 12, 134, 200, 239, 258.

Special agreement; 84, 174-176, 182, 202, 203, 204, 210, 211, 217, 219, 221, 267, 309, see also compromis.

Statute of the International Court of Justice:

- article 2; 215
- article 3; 215, 216
- article 4; 216
- article 9; 215
- article 13 (1); 216
- article 21; 226
- article 22; 225, 227
- article 26 (2); 217
- article 29; 211
- article 31; 217
- article 33; 228
- article 35 (2); 213
- article 36; 197, 202, 203, 205, 207, 251, 252
- article 39; 281
- article 38; 221
- article 40; 210
- article 41; 199
- article 42; 219
- article 46; 220
- article 53; 220
- article 54; 221
- article 55; 222
- article 63; 214
- article 64; 228
- article 65; 212, 223
- article 66; 223
- article 68; 223
- article 60; 198.

Territorial integrity; 3, 4, 12, 33, 134, 173, 239, 258.

Third-party intervention; 214, 229.

Treaty Establishing the Organization of Eastern Caribbean States; 51, 143, 167, 298, 310.

United Nations Convention on the Law of the Sea; 26, 28, 70, 91, 98, 99, 143, 145, 149, 152, 155, 160, 170, 173, 178, 179, 197-199, 208, 211, 214-217, 220, 306, 405, 406, 428, 430.

United Nations Environment Programme (UNEP); 430.

Verification; 279, 280.

Vienna Convention for the Protection of the Ozone Layer; 143, 166, 299, 428.

Vienna Convention on the Law of Treaties; 143, 145, 149, 152, 155, 158, 160, 161, 164, 167, 205, 306, 427.

Vienna Convention on the Representation of States in their relations with International Organizations of a Universal Character; 24, 28, 51, 70, 143, 165, 298, 426.

Vienna Convention on Succession of States in Respect of Treaties; 24, 51, 70, 143, 146, 165, 426.

Witness; 82, 85, 158, 161, 186, 220, 228.

كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم . استعلم عنها من المكتبة التي تتعامل معها أو اكتب إلى : الأمم المتحدة ، قسم البيع في نيويورك أو في جنيف .

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

Litho in United Nations, New York ISSN 0255-1276 26771—August 1991—3,440

United Nations
GENERAL
ASSEMBLY
Forty-sixth session
Official Records

CORRIGENDUM

Supplement No. 33
(A/46/33)
1 October 1991

NEW YORK

REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

Corrigendum

Annex, paragraph 328, second sentence

For An example is read As an example appears

Litho in U.N.
91-32162 2562c (E)